THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the York County Court of Common Pleas
for the Sixteenth Judicial Circuit

Honorable William A. McKinnon, Presiding Judge

Appellate Case No. 2021-000907
Circuit Case No. 2019-CP-46-01736

Thomas Lovelace & Carol Lovelace,

Respondents,

v.

The Center for Oral and Maxillofacial Surgery, P.A., & Mark Billman, DMD, MD,

Appellants.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4601736

Thomas Lovelace et al
PLAINTIFF(S)

Center For Oral And Maxillofacial Surgery Pa et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Orders on Motions in Limine Taken Under Advisement

Defendants' Motion to Exclude Evidence that a Plaintiff Expert Previously Served as An Expert for the Defendant Practice in an Unrelated Matter:

I have considered the issue of whether the Plaintiff can elicit testimony that their expert previously served as a defense expert for Dr. Billman's partner. Although probative on the issue of lack of bias/prejudice, my ruling is that the jury learning the practice had been previously sued would be unfairly prejudicial under Rule 403 and I am going to grant the motion to exclude that testimony.This ruling would not limit testimony that he previously served as a defense expert without mention of Dr. Billman or his practice.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/10/2020 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Plaintiffs' Motion to Exclude Evidence of Smoking and Alcohol Use by Plaintiff:

I am going to grant the motion in limine and exclude the evidence of the Plaintiff's smoking and drinking. However, if the Plaintiff elicits testimony that Defendant caused the patient's cancer by either failing to ensure that the tooth was timely smoothed or extracted or by not immediately extracting the malposed tooth or that the cancer was caused by dysplasia, I will permit Defendants to offer evidence that Plaintiff's cancer was caused by his smoking or alcohol use.

York Common Pleas

Case Caption: Thomas Lovelace , plaintiff, et al VS Center For Oral And Maxillofacial Surgery Pa , defendant, et al

Case Number: 2019CP4601736

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Thomas Lovelace and Carol Lovelace, Plaintiffs, vs.	)	Case No. 2019-CP-46-01736
The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD, Defendants.	)	**ORDER DENYING ALL POST-TRIAL MOTIONS**

This matter came before the Court by way of Defendant's Motion for Judgment Notwithstanding Verdict/Motion for a New Trial and Plaintiff's Motion for a New Trial on the Sole Issue of Recklessness. For the reasons set forth below, all post-trial motions are DENIED.

The Court finds Plaintiffs presented evidence which reasonably supported a finding that Defendant was the proximate cause of Plaintiffs' injuries. A trial judge cannot disturb findings of a jury unless the record contains no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Force v. Richland Mem'l Hosp*., 322 S.C. 283, 471 S.E.2d 714 (Ct. App. 1996).

The Court further finds no error in any of the rulings or actions outlined in Defendants' motion. First, the excluded evidence of Plaintiff's smoking and drinking was irrelevant to any issue in the case. The principal issue was whether Dr. Billman met the standard of care in his treatment of Mr. Lovelace. Whether Mr. Lovelace was at higher risk of mouth ulcers or cancer due to his medical history has no bearing on this issue. Smokers and drinkers are entitled to reasonable medical care, just as non-smokers and teetotalers are. The exclusion of this irrelevant evidence cannot be prejudicial. See *Otis Elevator, Inc. v. Hardin Const. Co. Group, Inc.*, 316 S.C. 292, 450 S.E.2d 41 (1994).

Defendants also object to the method of redaction, which "whited out" the answers to "Pertinent FMH/SHX." This objection is meritless for several reasons. First, there is no evidence these cryptic abbreviations were even understandable to the jury. Second, Plaintiffs never argued that Defendant failed to consider Plaintiff's past medical history so the related portion is irrelevant. Finally, Defendants agreed to the redaction method.

The Court's refusal to place nonparties on the verdict form was not error and did not prejudice Defendant. See *Machin v. Carus Corp*., 419 S.C. 527, 799 S.E.2d 468 (2017); *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017). Similarly, the failure of the jury to determine what constituted actual versus noneconomic damages in awarding a verdict was not prejudicial, as the verdict can be sustained solely on the uncontested evidence of economic loss presented by Plaintiffs. Finally, the charge that, "[t]he negligence of a later treating doctor is foreseeable," is a correct statement of law and did not prevent the jury from considering intervening or superseding

causes. *See Payton v. Kearse*, 319 S.C. 188, 460 S.E.2d 220 (Ct. App. 1995) rev'd on other grounds, 329 S.C.511, 495 S.E.2d 205 (1998); *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984); *Fairchild v. SC DOT and William Palmer*, 398 S.C 90, 727 S.E.2d 407 (2012).

As to Plaintiffs' motion, the Court finds Plaintiffs presented no evidence showing Defendant's actions were willful, wanton, or reckless. A "conscious failure to exercise due care" must mean more than the Defendant doctor made a conscious decision which was detrimental to the plaintiff, else all medical malpractice actions would support punitive damages. The Court finds no reason to alter its prior ruling on punitive damages. See S.C. Code Ann. Section 15-33-135 (Supp. 1999); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996).

All post-trial motions are DENIED.

The $2 million verdict in favor of Mr. Lovelace is reduced to $1.2 million according to the 40% comparative negligence finding by the jury.

IT IS SO ORDERED.

_____ _____

Date

Hon. William A. McKinnon

Presiding Judge

York Common Pleas

Case Caption: Thomas Lovelace , plaintiff, et al VS Center For Oral And Maxillofacial Surgery Pa , defendant, et al

Case Number: 2019CP4601736

Type: Order/Other

So Ordered

/s William A. McKinnon, Chief Judge for Administrative Purposes, 16th Cir., #2761

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4601736

Thomas Lovelace et al
PLAINTIFF(S)

Center For Oral And Maxillofacial Surgery Pa et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Per the jury verdict form, judgement should be entered in favor of Thomas Lovelace and against The Center for Oral and Maxillofacial Surgery, PA and Mark Billman, DMD, MD in the amount of $1,200,000.00, it is so ordered.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/22/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

York Common Pleas

Case Caption: Thomas Lovelace , plaintiff, et al VS Center For Oral And Maxillofacial Surgery Pa , defendant, et al

Case Number: 2019CP4601736

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, Chief Judge for Administrative Purposes, 16th Cir., #2761

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
THOMAS LOVELACE and CAROL LOVELACE,	)	**C/A No.: 2018-NI-46-_____**
Plaintiffs,	)	
v.	)	**SUMMONS (Jury Trial Requested)**
The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD,	)	
Defendants.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Theile B. McVey_____
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May 16, 2019

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
THOMAS LOVELACE and CAROL LOVELACE,	)	**C/A No.: 2018-NI-46-_____**
Plaintiffs,	)	
v.	)	**COMPLAINT (Jury Trial Requested)**
The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD,	)	
Defendants.	)	

Plaintiff would respectfully show that:

1. Plaintiff Thomas Lovelace is a citizen and resident of the County of York, State of South Carolina. Carol Lovelace is the wife of Thomas Lovelace and is a resident of York County, State of South Carolina.

2. Defendant The Center for Oral and Maxillofacial Surgery, P.A. is a professional association existing under the laws of the State of South Carolina, whose mission is to provide medical services to the public, and who owns and operates a medical facility in York County, located at 372 S. Herlong Ave. Rock Hill, SC 29732.

3. Defendant Mark Billman, DMD, is a dental and medical doctor trained in oral and maxillofacial surgery and is licensed by the State of South Carolina. Upon information and belief, he is employed by The Center for Oral and Maxillofacial Surgery, P.A. At all times relevant to this action, Dr. Billman provided oral and maxillofacial surgery services to the public from the facility located at 372 S. Herlong Ave., Rock Hill, SC 29732.

4. At all times relevant to this action Defendants The Center for Oral and Maxillofacial Surgery, P.A. and Dr. Mark Billman, DMD, MD, created and maintained a surgeon-patient relationship with Thomas Lovelace.

STATEMENT OF FACTS

5. Mr. Thomas Lovelace, age 64, presented to Dr. Robert Renner at York Dental Group on April 30, 2015 with complaints of a sore on his tongue. Mr. Lovelace presumed the sore was the result of biting his tongue five weeks prior. However, Dr. Renner believed the spot needed to be biopsied to determine the problem. Dr. Renner referred Mr. Lovelace to The Center for Oral and Maxillofacial for a biopsy of the tongue.

6. On May 3, 2015, Mr. Lovelace presented to Dr. Billman at The Center for Oral and Maxillofacial Surgery, P.A., as recommended by Dr. Renner. Instead of doing a biopsy on Mr. Lovelace's tongue, Dr. Billman simply diagnosed Mr. Lovelace with a tongue laceration in the area opposing tooth #32.

7. In November of 2015, Mr. Lovelace again presented to York Dental Group with complaints of pain in the same area of the previous diagnosed laceration.

8. On August 11, 2016, Mr. Lovelace presented again to York Dental Group with complaints of sore in the area opposing tooth #32. Dr. Renner advised extracting tooth #32.

9. On August 19, 2016, Mr. Lovelace had tooth #32 extracted at The Center for Oral and Maxillofacial Surgery, P.A. At this time, Dr. Simpson finally took a biopsy of the lesion that had been present on Mr. Lovelace's tongue since May of 2015.

10. On August 25, 2016, it was confirmed that the lesion on Mr. Lovelace's tongue tested positive for squamous cell carcinoma.

11. As a result of this late diagnosis, Mr. Lovelace has been forced to undergo radiation, chemotherapy, and partial removal of his tongue.

12. Dr. Mark Billman and The Center for Oral and Maxillofacial Surgery, P.A., through their agents, servants, and employees, were negligent in the following particularities which constitute a failure to comply with the appropriate standard of care:

a. In failing to biopsy Mr. Lovelace's lesion on May 3, 2015;

b. In failing to follow up or schedule a follow up appointment with Mr. Lovelace following the May 3, 2015; and,

c. In failing to properly diagnose Mr. Lovelace's tongue lesion.

13. All of the above described acts combined and concurred as the proximate cause of the injury sustained by Plaintiff Thomas Lovelace. As a result, Mr. Lovelace underwent much physical pain, suffering, mental anguish, and emotions distress. He has incurred and will continue to incur expenses for medical care as a result of the Defendants' negligence. Further, he has lost wages as a result of the Defendants' negligence.

14. As a result of the injuries and damages suffered by Thomas Lovelace, his wife, Carol Lovelace, lost the comfort, companionship, and consortium of her husband, and the services provided by her husband.

WHEREFORE, Plaintiffs pray for judgment in this matter in a sum sufficient to adequately compensate them for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted

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May 16, 2019

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	C/A NO.: 2019-CP-46-01736
Thomas Lovelace and Carol Lovelace,)	
)	
Plaintiffs,)	
)	**ANSWER ON BEHALF OF THE CENTER FOR ORAL AND MAXILLOFACIAL SURGERY, P.A. AND MARK BILLMAN, DMD, MD**
-vs-)	
)	
The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD,)	**(Jury Trial Demanded)**
)	
Defendants.)	
_____)	

The Defendants The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD, answering the Plaintiffs' Complaint, will respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted, modified, or explained. Strict proof is demanded.

2. The Defendants admit upon information and belief the allegations of Paragraph one (1) of the Complaint.

3. Answering the allegations of paragraph two (2) of the Complaint, The Center for Oral and Maxillofacial Surgery, P.A. is a professional association existing under the laws of the State of South Carolina, with an office location at 372 South Herlong Avenue in Rock Hill, South Carolina. Any remaining or inconsistent allegations are denied, and strict proof is demanded.

4. The Defendants admit the allegations of paragraph three (3) of the Complaint.

5. The allegations of paragraph four (4) of the Complaint are denied as stated. The Defendants had an oral surgeon-patient relationship with Thomas Lovelace during the time

periods he received care and treatment from the Defendants as is reflected in the records of The Center for Oral and Maxillofacial Surgery, P.A.. Any other timeframes are denied, and strict proof is demanded.

6. Answering the allegations of paragraph five (5) of the Complaint, the Defendants admit that on April 30, 2015, Dr. Rob Renner referred Mr. Lovelace to the practice for an examination of the right side of the tongue. Defendants are without information to admit or deny the remaining allegations of paragraph five (5), so same are denied. Strict proof is demanded.

7. The allegations of paragraph six (6) of the Complaint are denied as stated. Mr. Lovelace presented to Dr. Billman on May 13, 2015 for an evaluation of the right side of his tongue. The patient reported he had bitten his tongue, and based on Dr. Billman's examination, he found that tooth #32 was malpositioned in that it was rotated lingually, it had a sharp lingual cusp, and recontouring and/or extraction of that tooth might assist with the traumatized lateral border tongue ulceration, so he referred the patient back to Dr. Renner to discuss these options with him. Dr. Billman admits he did not biopsy the tongue on May 13, 2015. Any remaining and/or inconsistent allegations are denied, and strict proof is demanded.

8. Answering the allegations of paragraph seven (7) of the Complaint, Defendants admit, upon information and belief, that Mr. Lovelace did not follow up with Dr. Renner or anyone from his office as instructed until November 11, 2015. There was a sharp spot on #32 which Dr. Greiner polished. The York Dental Group records do not document any complaint of pain in November of 2015 or that a laceration, sore, or ulceration on the tongue was present. Strict proof is demanded.

9. Answering the allegations of paragraph eight (8) of the Complaint, the Defendants admit that the York Dental Group records indicate Mr. Lovelace "has another sore area lateral border of tongue in area opposing tooth 32" and Dr. Renner recommended that #32 be extracted

and that Dr. Renner referred the patient to Defendant Center for the extraction. Any remaining or inconsistent allegations are denied, and strict proof is demanded.

10. Answering the allegations of paragraph nine (9) of the Complaint, the Defendants admit that on August 19, 2016, Dr. Thomas Simpson biopsied the right side of the tongue in addition to extracting #32. Defendants deny that the area biopsied on August 19, 2016 had been present since May 13, 2015. Strict proof is demanded.

11. Answering the allegations of paragraph ten (10) of the Complaint, the Defendants refer to the medical records and the testimony of the healthcare providers involved for a complete and accurate recitation of the care and treatment provided as well as what pathologic testing revealed. All allegations of this paragraph inconsistent with the medical records and the testimony of the healthcare providers involved are denied, and strict proof is demanded.

12. The Defendants deny the allegations of paragraphs eleven (11), twelve (12) including all subparagraphs, thirteen (13), fourteen (14), and the "wherefore" clause of the Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

13. The actions of Defendant Mark Billman, D.M.D., M.D. conform to and were in full compliance with the applicable standard of care and were within acceptable medical and dental standards and methods and, at no time pertinent thereto, did Defendant Billman deviate from any medical or dental standard as it pertains to Thomas Lovelace. Consequently, the Plaintiffs are barred from recovery against Defendant Billman.

FOR A THIRD DEFENSE

14. Defendant The Center for Oral and Maxillofacial Surgery, P.A. alleges that its employees and personnel properly followed proper standards recognized and practiced by dental and medical offices and employers. These Defendants further allege that The Center for Oral

and Maxillofacial Surgery, P.A.'s employees and personnel practiced that degree of knowledge, care, and skill equal to that of similarly-qualified employees and personnel and that they acted in accordance with standards recognized and practiced by dental and medical offices and employers. As such, there can be no recovery against the practice.

FOR A FOURTH DEFENSE

15. That the cause of action asserted in the Complaint is barred by the South Carolina Statute of Limitations in such cases, and that the Defendants plead such statute as an affirmative defense and complete bar to this action.

FOR A FIFTH DEFENSE

16. That any injury or damage as alleged in the Complaint was due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff Thomas Lovelace in failing to exercise reasonable care, due care, or any care for the protection of his own person.

FOR A SIXTH DEFENSE

17. Defendants allege, as an affirmative defense, that even if Defendants were negligent, careless, grossly negligent, reckless, willful or wanton, which they specifically deny, the Plaintiff Thomas Lovelace's negligent, careless, grossly negligent, reckless, willful and wanton conduct was greater than Defendants' alleged negligence, so this cause of action is barred.

Alternatively, if Plaintiff Thomas Lovelace's negligence was less than Defendants' alleged negligence, the Plaintiffs' amount of recovery, if any, should be reduced in proportion to the amount of the Plaintiff Thomas Lovelace's negligence based on the doctrine of comparative negligence.

FOR A SEVENTH DEFENSE

18. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged

in the Complaint were a proximate result of one or more independent, efficient and intervening causes which the Defendants affirmatively plead as a complete bar to this action.

FOR AN EIGHTH DEFENSE

19. The Defendants allege, upon information and belief, that any injuries and/or damages sustained by Thomas Lovelace were due to, caused, and occasioned by a natural disease process over which the Defendants had no control and, as such, plead such natural disease process as a complete bar to this action.

FOR A NINTH DEFENSE

20. That any alleged negligence on the part of the Defendants, which negligence is specifically denied, was not the proximate cause of any injury or damage to Plaintiffs.

FOR A TENTH DEFENSE

21. Because the alleged acts of negligence occurred after July 1, 2005, this case is subject to the limitations of liability and provisions outlined in the S.C. Noneconomic Damage Awards Act of 2005, S.C. Code Ann. § 15-32-200, et seq. The Defendants deny liability as set forth within this Answer; however, the Defendants answer the limitations set forth within the Act apply to this action.

FOR AN ELEVENTH DEFENSE

22. The Defendants assert that this action is governed by the S.C. Noneconomic Damage Awards Act of 2005, S.C. Code Ann. §15-32-200, et seq. Therefore, if Plaintiffs are entitled to any recovery, which the Defendants specifically deny, recovery for any alleged noneconomic damages is capped pursuant to S.C. Code Ann. § 15-32-220.

FOR A TWELFTH DEFENSE

23. The Defendants would affirmatively assert that they would be entitled to any and all benefits, joint and several liability protections, emergency situations limitations on liability,

any and all monetary limitations or caps of liability and/or damages under the Economic Development, Citizen and Small Business Protection Act and the South Carolina Medical Malpractice Reform Statutes including, but not limited to §15-38-15; §15-32-200; §15-32-210; §15-32-220; §15-32-230; §15-32-240; §15-36-100; and §15-79-125 and any other applicable provisions under the acts.

FOR A THIRTEENTH DEFENSE

24. Plaintiffs' claims for punitive damages should be dismissed pursuant to S.C. Code Ann. § 15-32-520 and S.C. Code Ann. § 15-32-530 in that there is no evidence which would support an award of punitive damages, and these Defendants assert all defenses and limitations of liability provided by statute and case law.

FOR A FOURTEENTH DEFENSE

25. That any claim for punitive or exemplary damages as set forth in the Plaintiffs' Complaint against the Defendants would violate the Defendants' constitutional rights under the due process clause in the Fifth and Fourteenth Amendments to the Constitution of the United States of America, Excessive Fines Clause in the Eighth Amendment to the Constitution of the United States of America, the Double Jeopardy Clause in the Fifth Amendment to the Constitution of the United States of America, and similar provisions in the Constitution of the State of South Carolina and/or the common law and public policies of the State of South Carolina, and/or applicable statutes and court rules, and the Defendants raise these defenses as a complete bar to the imposition of punitive or exemplary damage against them.

FOR A FIFTEENTH DEFENSE

26. The Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Complaint of the Plaintiffs, the Defendants request that the same be dismissed with prejudice together with the costs and disbursements in the defense of this matter and from such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Marian Williams Scalise
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Lydia L. Magee, Esquire (SC Bar No. 16584)
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Attorneys for Defendants The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD

June 18, 2019.
Myrtle Beach, South Carolina

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVD.
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EXHIBITS

NO.	DESCRIPTION	I.D.	EVD.
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Court's 4	Note		742
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THE COURT: All right. Thank you. As you said,

THE COURT: Sure. That will be fine. I will head over there.

MS. MCVEY: Thank you, judge.

THE COURT: I'll give you my cell phone number and if for some reason you have trouble getting in the building or something like that because it is close to five just call me.

MS. MCVEY: Okay.

THE COURT: My number is (803) 487-4540.

MS MCVEY: Thank you, judge. I appreciate it.

THE COURT: Thank you counsel. See everybody at 9:30 at Moss.

(WHEREUPON, the trial was in recess for the day.

(WHEREUPON, the trial commenced on June 15, 20121.)

THE COURT: While we are waiting, anything we need to take up before we get started? Anything from the plaintiff?

MR. KASSEL: One thing, Your Honor. I have given Miss Butler Plaintiff's Exhibits Number one through 19 and I given them as well to the defense. I believe that there is an agreement by the parties that these are in evidence and if I am mistaken please let me know. If they're in evidence then we're just going to start to just them and I'll say Exhibit Five which is

already in evidence.

THE COURT: All right. Any objection to the defense the plaintiff's one through 19 coming into evidence?

MR. TIERNEY: No, Your Honor and in similar fashion we have asked for defendant's one and two to come into evidence. Defendant's 1 is Doctor Billman's record -- no, I think I got that opposite. I think York Dental is Defendant's 1. Doctor Billman's record is Defendant's 2. We've made redactions as we discussed in chambers yesterday to those records. The only caveat is, we also have a backup set should the door be opened on the alcohol and smoking issue we got a set. But right now we've got the redacted set in as one and two by agreement.

MR. KASSEL: That's right.

THE COURT: Any objection to the Defendant's 1 and 2 coming in?

MR. KASSEL: No, and what is being redacted is the smoking and drinking, but also financial information, insurance and the like.

THE COURT: All right. Plaintiff's Exhibits 1 through 19 and Defendant's Exhibits 1 and 2 are in evidence by consent of the parties.

(Plaintiff's Exhibit 1-19 and Defendant's Exhibits

their list. So here's an example of a differential diagnosis list for a lesion or ulceration on a tongue. What are the possibly causes? It could be oral cancer, it could be trauma from a sharp tooth and the most important thing about a differential diagnosis list is that the list has to be complete. If a doctor leaves off something and it goes untreated or undetected the patient can die or be seriously harmed.

The next step for differential diagnosis is to rule it out. And if there is any doubt about what is causing the abnormal sign or symptom you can't rule it out. There is no guessing, no almost sure. Every reasonable cause is listed until it's ruled out. Doctors don't have crystal balls. They can't know what's coming in the future and so they use the differential diagnosis to make sure they don't miss anything in the present. How do they rule it out? They do tests. They do tests like biopsies to see what a lesion is, or they may treat each reasonable cause and schedule follow-ups to see if the treatment has made the symptom go away. Sometimes they refer it to a specialist and as a cause is ruled off they can cross it off the list. And if they find a cause take can't be ruled out its then the real cause and you can start treatment. If the possible cause is dangerous

or life threatening the doctor must take steps and do tests and do follow-up soon enough to save the patient because undo delay can danger a patient's life. And sometimes you're going to hear that the problem is exactly what the doctor thought it was to begin with. But every so often it's something else and that's why doctors list every reasonable cause and they leave it on the list until they rule it out. Sometimes a potential cause is urgent danger and if left untreated it can seriously harm or kill a patient. When that's is possible cause even if it's not very likely it must be rule out. So on a tongue cancer example, you have to do a differential --

MR. TIERNEY: Your Honor, I'm sorry. I'm sorry. I would object to the nature of this. It's more of a closing then a presentation of the evidence. There's no suggestion of what the evidence will be.

THE COURT: I am going to overrule the objection.

MS MCVEY: Thank you, Your Honor.

In our tongue cancer example the doctor would a differential diagnosis. He would list trauma. He would list cancer. Even when a doctor thinks the tongue lesion is almost certainly due to a sharp tooth he must monitor the lesion after the tooth is dealt with. He must formulate a plan. He must insure that

be monitored and evaluated and treated. Instead, Doctor Billman did not do a differential diagnosis. He didn't consider cancer. He took a short cut and assumed the lesion was from the tooth and by failing to consider cancer the patient is not informed of the urgency, a follow-up appointment is not made, the referring dentist are not informed of the urgency or what needs to be done and when. And the life-threatening cancer is allowed to continue to grow.

On November 11th of 2015, Doctor Greiner, who is a partner of Doctor Renner, general dentist, sees the patient in his office for a six-month dental hygiene checkup. Doctor Greiner sees the lesion near 32 is larger then it was in May. Doctor Greiner listens to the patient tells him the lesion it's not painful. It's just there. Doctor Greiner then reviews Doctor Billman's letter and schedules the patient to come back to have the tooth smoothed. Doctor Greiner schedules the patient to come back a week later and the patient comes back as instructed.

November 18th of 2015, Doctor Greiner smoothes tooth 32 as recommended by Doctor Billman and he tells the patient to come back if that tongue becomes painful. In June of 2016, the patient notes the

Lovelace.

Let me explain to you a little about who we are suing and why. We're suing Doctor Billman and his practice for five reasons. The first reason is Doctor Billman on May 13th of 2015 chose to ignore the possibility of cancer. Doctor Billman did not perform a differential diagnosis for the tongue lesion. How do we know that? Doctor Billman's office notes -- and I am going to show those to you in a minute -- never mentioned the word cancer or the potential for cancer. Doctor Billman did not consider the lesion could be cancer and instead Doctor Billman took that short cut and he assumed the lesion was caused from the trauma. Doctor Fonseca and Doctor Spalla, experts in this case, will explain to you that when a doctor sees a lesion on a tongue he must suspect tongue cancer. It has to be watched and followed up on. It's an urgent danger which left untreated can result in needless harm to the patient. Doctor Fonseca and Doctor Spalla explained that when Doctor Billman choose not to consider cancer he allowed those precancerous cancer cells to develop and to grow. As a result Tom developed stage three cancer. The larger the lesion grows the more drastic the treatment and the likelihood that it will spread. If caught early a

simply procedure can be done to remove that lesion and it's very easy to do. If Doctor Billman had considered cancer and put it on the differential diagnosis list he would have ruled it out before it spread.

The second reason that we are suing Doctor Billman is that he never told Tom Lovelace that this lesion could potentially be cancer. Doctor Fonseca and Doctor Spalla will explain that Doctor Billman is required to tell the patient about the potential for cancer. Why? Why is that required? Because the patient has a right to know so Tom could protect himself. So that the patient understands the urgency of what could be taking place in his mouth. Doctor Billman was required to tell Tom to have that tooth fixed in two weeks, very timely, and come back to Doctor Billman so he can evaluate that patient. How do we know that he didn't mention that to Tom? How do we know that? There's nothing in his record you will see recommending a follow-up appointment. There's nothing in his record setting a time for when the follow-up should occur. There's nothing in his letter to the referring dentist mentioning cancer or recommending a time of when to get the tooth smoothed or setting a time to follow-up. There's no sense of

urgency in any of these records.

Doctor Fonseca and Doctor Spalla will explain that by not telling Tom that the lesion could be cancer he totally disarmed Tom. Tom is no longer worried about this lesion. It's not hurting him. No one has told him that it could be urgent. He's been to the dentist. He's been to the specialist. They say it's just from the tooth. No one tells Tom that it is cancer or potentially cancer it could continue to grow. And telling Tom that the lesion could be cancer is so easy to do. Doctor Billman needed to tell Tom about the potential of urgent danger so it that it could be addressed urgently. It prevents needless harm to Tom.

The third reason we're suing Doctor Billman is, he choose not to schedule a follow-up appointment for Tom to return to see Doctor Billman. The return appointment would be for Billman to check on the lesion to see that it healed following the smoothing of the tooth, and if it had not then Doctor Billman would know that they needed to biopsy the lesion. How do we know that he didn't schedule or recommend a follow-up appointment? The records, you will see, don't have a note to come back or to follow-up. The record doesn't request a follow-up appointment. And

asked Doctor Spalla and Doctor Fonseca whether Doctor Billman was required to intervene to diagnose this early cancer if it was there to be seen? And you will hear them say that proper intervention is really the only reason the medical profession exists. And if the lack of proper intervention to prevent this cancer from growing allowed harm or led to harm then it is a cause. Before we came to trial we needed to determine whether Billman warned Tom Lovelace that this lesion could be cancer, because if Doctor Billman warned Tom that this lesion could be cancer and Tom just sat on that information, we would have no reason to come to court. And so we look carefully at Doctor Billman's records. And you will see these in blowups of them as well. Doctor Billman's handwriting is a little difficult to read. But this is what he determined diagnosis was. Right lateral border tongue, ulceration traumatic two. And then his treatment plan, general dentist, to consider recontour/extraction. General dentist is to consider smoothing the tooth and if that doesn't work extracting the tooth. And you'll have these records. They're in evidence. You will see that there is no mention cancer in his notes. No mention of a return appointment. The note only discusses trauma and it

only gives two options; smooth and if that doesn't work extract. And then we look carefully at Doctor Billman's letter to Doctor Renner on the same day, May 13th, of 2015. And again, I'll translate it. But this is his diagnosis; right lateral border tongue, ulceration traumatic. And then his comment. Thank you for referring Mr. Lovelace. I feel the lesion is from malposition number 32. Re-contorting may help but I also discussed extraction with Mr. Lovelace. He is to discuss his options with you.

No mention of cancer. The letter only discusses trauma and it you only gives two options for treatment; smooth, and if that doesn't work then you would extract. We asked Tom Lovelace, did Doctor Billman ever tell you this could be cancer? And you're going to have a chance to met Tom Lovelace. He is going to testify. And you will get to understand who he is. He was captain flying big planes for American Airlines International flights. He's man who uses checklists and follows up when he is told. And Tom will tell you that in May of 2015 Doctor Billman never told him this lesion could be cancer. You will see that after Tom was told the potential for cancer in August of 2016 he followed up every time.

Before we came to trial we need to determine if

Renner Greiner.

ROBERT RENNER, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

THE COURT: Doctor Renner, if you don't mind removing your mask.

DIRECT EXAMINATION

BY MR. KASSEL:

Q Are you comfortable?

A Yes, sir.

Q Doctor Renner, I'm John Kassel. We of course have met before. Can you start by giving us your full name.

A Robert Joseph Renner.

Q And I'm going to ask you to speak up a little bit and make sure everybody can hear you.

A Robert Joseph Renner.

Q And what is your occupation?

A I'm a dentist.

Q And are you a general dentist?

A General dentist.

Q And what is the name of your practice?

A York Dental Group.

Q Where is that located?

A It's on East Alexander Love Highway, next to the high school.

Suspicious. It looked suspicious.

Q Suspicious for what?

A Suspicious for cancer.

Q How did it compare to what you thought were hallmarks of cancer?

A Somewhat consistent.

Q Were you worried about it?

A No, not particularly.

Q Did it need to be followed up?

A I thought so.

Q Would you ignore it?

A No.

Q Would you be worried about it if you were to ignore it?

A Yes.

Q Where was it located in the mouth?

A It was on the right lateral border of the tongue next to the lower wisdom tooth.

Q On what side?

A On the right side.

Q What tooth?

A The tooth number 32.

Q All right. And in your note, you have a note of what tooth. What did you write?

A Yeah, so the note says area number three. I believe that she forgot to include the two. I think she meant to say

tooth 32.

Q Will you tell this jury on April 30th, 2013 what tooth was this lesion next to?

A It was next to the lower right wisdom tooth.

Q And give us the number?

A Number 32.

Q All right. How big was the lesion?

A Approximately four millimeters by three millimeters.

Q And is that something you measures or something you eyeballed?

A Something we measured.

Q Okay. And do you do that with ruler?

A We do it with an instrument called a periodontal probe.

Q And the location on the tongue where this lesion was, did that give you any concern for cancer or against cancer?

A It's in a common area for cancer, the side of the tongue.

Q And did you think it looked like a bite mark?

A I can't say specifically looking back on it. I can say that it's in an area where bite marks happen too.

Q What was your plan?

A My plan was to have Doctor Billman or another surgeon at the center have a look at it and give me their recommendation.

Q And the center, is that Doctor Billman's practice?

Q And by the center do you mean Doctor Billman?

A Yes, sir.

Q And when Tom was in your office did you talk to Tom about -- well, what did you tell Tom?

A I can only speculate what we had talked about. I'm sure it was -- we brought up the area to him and mentioned that we wanted to refer him to the center to get a game plan together.

Q Did you tell Tom that you thought this was cancer?

A No.

Q So my friend, Mr. Coles, started his opening statement this morning, told the jury that you were going to tell Tom that this was cancer?

MR. COLES: Your Honor, object to the leading nature of this.

Q Is that in fact --

THE COURT: I will sustain the objection on the phrasing.

Q Did you tell Tom that this was a cancer or not?

A I never used the word cancer.

Q That's not how you do it?

A No, sir.

Q What do you do generally?

A I generally -- you know, you have to tread a fine line because you want the patient to be somewhat concerned that they

go for the evaluation but I don't want them to be so concerned that they're losing sleep over it. So I just tell them that I don't know what it is but it looks suspicious and I would like for them to have a second evaluation.

Q Okay. Did you say biopsy to Tom?

A I can't be for certain whether I did or not.

Q Did you say biopsy to Doctor Billman? I want a biopsy?

A I don't believe so.

Q Would you tell an oral surgeon whether to biopsy a lesion on the tongue or not?

A No, I would not.

Q Can you explain that answer?

A Well, I wouldn't tell another professional the course of action that I think they should take. I think that's up to them.

Q Does that rule apply when you're talking about a specialist who has more experience identifying cancers?

A Yes.

Q I want to show you exhibit number two. Number two in evidence, and is that your referral to Doctor Billman?

A Yes, it is.

Q And what did you write on the sheet? If you could pull that up please.

A For examination of the right side of the tongue.

Q And that's where the lesion was?

Doctor Greiner has his assistant writes his notes for him.

Q And his assistant wrote this note down?

A Yes.

Q That Tom believed that this tooth was cutting his tongue up?

A It appears so.

Q That's what Doctor Billman told him, right?

A It appears so.

Q Just believe the doctor, didn't he?

A It appears so.

Q So Doctor Greiner polishes the tooth. Is there a return appointment for Tom?

A There is not. Not to see Doctor Greiner. The next visit is in six months to see the hygienist.

Q Okay. Is there any documentation in this record that Doctor Greiner said to Tom here is some discharge instructions?

A No.

Q Is there anything in the record that suggests what Doctor Greiner told Tom to do?

A No.

Q Is there anything in the record that Doctor Greiner said to Tom you need to come back and let me check this after a while?

A No.

Q I bet that would be something you would do?

A Typically.

Q You would want to see -- well, what would you want to see happen?

A Resolution.

Q In other words did your treatment work?

A Yes, sir.

Q No follow up appointment was made by Doctor Greiner with the staff with Tom in November?

A That's correct.

Q And you know who Tom is? He's a pilot for American?

A Yes.

Q He's flying to the Caribbean and Europe and wherever they go. It's a busy schedule?

A Yes.

Q And he came into the office in November. Did you know that he also had an appendicitis that August?

MR. TIERNEY: Your Honor, I object. I try not but this is extremely leading.

THE COURT: I will sustain the objection.

MR. KASSEL: I'll sustain the objection.

Q What information did you have about Tom about having an appendicitis?

A That was new to me. I just found that out.

Q All right. Bad question. In July, tell us what happened in July? So the tooth gets smoothed in November and

then what happened in July?

A Is that...

Q Can you put up the July visit please. Do you remember this one?

A I don't.

Q Okay. So, if you take a look at the record here, does that inform you of what is going on in July?

A Yes.

Q And what do you understand happened?

A So I believe that Tom came in on July 7th and Doctor Greiner and myself weren't in the office but Doctor Perlow who was another associate at the time was there and she had prescribed him a bottle of Peridex.

Q And what is Peridex?

A Peridex is Chlorhexidine which is an antibiotic.

Q Okay. Did Doctor Perlow -- so Tom came in. Do you know why he came in July?

A I don't.

Q And does Peridex does that have anything to do with pain?

A No.

Q But he was requesting that?

A Yes, it looks like that.

Q It is a controlled substance that a physician needs to be worried about?

A No.

Q What did Doctor Perlow do?

A It looks like she okayed the prescription.

Q And then he went on his way?

A Yes.

Q Did she examine him?

A I don't believe she did.

Q And I just want to get the timing of this just so the jury understands. You see Tom in April, April 30th of '15 and send to Doctor Billman?

A Right.

Q And then Doctor Billman writes you the letter after looking at Tom?

A Right.

Q I will save this for later because you don't know about that. And then in November Doctor Greiner sees Tom and fixes tooth 32?

A Right.

Q And then actually does it on the 18th?

A Right.

Q Okay. And then in July of the next year Tom is back and sees Doctor Perlow?

A That's correct.

Q When do you see Tom next?

A I think I saw him in August, August 11th.

note that --

MR. COLES: Your Honor, I apologize. That's leading.

MR. KASSEL: I haven't gotten to finish the question.

MR. COLES: It's so leading already though. It's terribly leading.

THE COURT: Counsel, let him finish the question.

MR. KASSEL: Hold your objection.

Q If you were rest assured by that letter of what Doctor Billman had sent, if Doctor Billman had told that to Tom, how do you think he would have felt?

MR. COLES: Your Honor, now I add not only leading, but it's calling for speculation what another person thinks or would have thought.

THE COURT: I am going to allow the question.

A I can only assume that he was relieved as well.

Q All right. What action did you take?

A I referred him back to the center to have tooth 32 extracted.

Q And did you do a referral form for that?

A I believe so. I don't know if there is one on record.

Q And was an appointment made for Tom to go back to -- this is exhibit five in evidence. Was there appointment made for Tom?

A One.

Q Now, in your training, are you telling the jury that you were never trained in how to identify suspicious areas on a tongue?

A No, I was.

Q Okay. Absolutely. This is your community. You were absolutely trained as a professional how to recognize areas in the oral cavity, the tongue, that might require further attention, correct?

A Correct.

Q And in this case on April 30th, you identified that spot on Mr. Lovelace's tongue, correct?

A Correct.

Q And your records -- and we can get them back up again if you need to -- your records mention specifically biopsy. Do you recall seeing that in your record when Mr. Kassel put it up for you?

A I think so, yes.

Q And there was some questions about whether you mentioned cancer and whether you mentioned a biopsy to Mr. Lovelace. Do you recall those questions? I'm about to ask them, but Mr. Kassel asked you. Do you recall that?

A Yes.

Q And again, is it true that you and I have never met before today, correct?

A I didn't know. I'm speculating, if it was my choice I would prefer the recontouring.

Q Well, what did the office do first, recontour or extract?

A Recontour.

Q So does that lead you to believe that Mr. Lovelace told your office I want to keep it the tooth. Let's smooth it first?

A Sounds accurate.

Q Now, when that letter was received in your office, you testified earlier -- we can show it to you if you want to see it -- that your office would have called Mr. Lovelace or contacted him to make an appointment, correct?

A Correct.

Q And you would do that I you presume because April 30 -- let me make sure I get those dates right -- April 30, 2015 you see a spot on the tongue and you send to Doctor Billman, correct?

A Correct.

Q May 13, Doctor Billman interacts with the patient, correct?

A Correct.

Q May 13, Doctor Billman sends you a letter, smooth or extract, correct?

A Correct.

Q When that comes into your office you sent the patient

Mr. Kassel pointed that out. And the question I am about to ask you is going to be very difficult. As a lawyer who has represented a lot of doctors I sort of apologize for this.

Doctor Greiner told you that when he saw Mr. Lovelace on November 11 and smoothed the tooth seven days later, that the lesion looked angry to Doctor Greiner, correct?

A Correct.

Q November 11, patient hasn't been back to Doctor Billman in months is in your office not seeing you but seeing your partner, Doctor Greiner, and Doctor Greiner tells you that the spot on the tongue on November 11, looks angry, correct? That's what he told you?

A I don't know if he used angry or ugly, but they both sound pretty bad.

Q All right. And after confirming with his own eyes, his own senses that this spot looked angry or ugly and smoothing the tooth, you would have absolutely expected Doctor Greiner to tell the patient come in. I'm smoothing this tooth because it is going to take care of this angry, ugly spot. Come back so we can check. You would expect that, wouldn't you sir?

A I would.

Q And did Mr. Lovelace come back to your office at any time from November when that tooth was smoothed, November of 2015 all the way up to July of 2016?

A No.

Q You were asked -- let me ask you this question, sir. If one of your patients has a sore spot on their tongue, an ulcer, and your patient is told this spot is most likely due to you biting it or sharp tooth, something of that nature. If the source of the trauma is removed, but yet the sore area remains you would expect your patient to come to you and say, doc, I did what you said. I removed that tooth. I let you dull that sharpness but I still got this area. You would expect that, wouldn't you?

A I would expect that.

MR. COLES: One moment please. Sir, thank you, very much.

THE WITNESS: Thank you.

THE COURT: Any redirect Mr. Kassel?

MR. KASSEL: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. KASSELL:

Q Doctor Renner, thank you for your patience with us in this process.

A Sure.

Q In the November note, where it talks about EIE and that's not from Old McDonald -- EIE NSF. It's an examination of the mouth. NSF, no significant findings?

A That's correct.

Q That's not true, right?

A No, that's clearly not true.

Q So, November of 2015 Tom had a lesion on his tongue that your partner you understand described as ugly?

A Right.

Q Because there would be no reason for Doctor Greiner to smooth that tooth if there was no lesion present?

A That's correct.

Q My friend, Mr. Coles, talked to you about protocol. What's your protocol? If somebody has this big old lesion on their tongue, what's the protocol in your office? Do you remember those questions?

A Yes.

Q The protocol would be to get the patient to come back?

A That's right.

Q Is there a difference, Doctor Renner, between what the protocol is and what actual may happen on any given day in a dental office or doctor's office?

A Meaning it doesn't always happen the way we want it to.

Q Exactly. So you can't testify, or can you testify in November, Doctor Greiner followed some protocol informing Tom to come back?

A I can't. I don't know.

Q Certainly a protocol would be to set up a return appointment?

A Typically.

Q And that -- was that done?

A I don't believe so.

Q You know there are a lot of ways to talk to a patient I learned through this case. Come back if you have a problem. You've heard that before. Come back. Let me see if you have a problem. Kind of putting it on the patient to figure out what's going on.

Do you side on that or do you prefer to see it yourself?

A Prefer to see it myself.

Q Sometimes people say come back if you have a problem, or they say come back if you have continued pain. Have you heard that?

A I have.

Q Do you know if Doctor Greiner said to Tom, I smoothed your tooth. If you have continued pain I want you to come back? Do you know if you said that?

A It' possible.

Q The source of the trama was the tooth. That was your understanding?

A That is what I was going off of.

Q The tooth had two problems to it, didn't it? One was it was sharp at the top on the cusp and the second was it leaned. Is that right? At least according to Doctor Billman?

A I don't remember.

Q In Doctor Billman's letter to you?

MR. COLES: Your Honor, I object. Leading.

THE COURT:

MR. COLES: And beyond the scope of direct.

MR. KASSEL: I was trying to address -- let me change the question judge.

THE COURT: All right.

Q If the tooth has two problems and only one is addressed, that tooth is still going to cause some problem to that tongue, is that right?

A Correct.

MR. KASSEL: Nothing further.

THE COURT: Any recross, Mr. Coles?

MR. COLES: Very brief. Just on one new thing that was said.

RECROSS EXAMINATION

BY MR. COLES:

Q Doctor Renner, that NSF, tell the jury again what that NSF means?

A No significant findings.

Q And unless I heard you wrong and I don't think I did. You just said in response to Mr. Kassel's question that Doctor Greiner, your partner, got it wrong when he wrote NSF, correct? I think you just said that.

A Yeah. I mean I would -- yeah. Yeah, he it did.

Q And that was on November 11, correct?

Q All right. So what is the standard of care for an oral surgeon who is sent a patient that has got some kind of lesion on the tongue?

A Well, I think it can be as simple as any medical problem we deal with. The first part is taking a history. So that's the first thing we need to do is sit down and listen to our patient, and if we have other records that may help out in that history that's the first thing we want to do, because that often can really help to figure what things are based on that alone. After we completed a history which would include background of the patient, et cetera, any other pertinent information about their medical history. Then we move on to a physical examination. So, you know, it would be a detailed physical examination particularly of that area itself and we try to mentally correlate what we heard them telling us and we gathered from records with our physical examination. Following that we're going to think about some kind of what we call assessment. So we are trying to you think of what this is. Usually there is a list of things that something could be. We call that differential diagnosis. That's one of the things I kind of hammer into the medical students early so that they can help create that. Its basically a list of possibilities. The things what something could be. You know, so we do that in our heads and some people are better about writing it down then others. But we all do it at least in our heads at minimum, and

that's what we think with our assessment and then we institute a plan.

They came to us for care so then we are going to figure out what we are going to do for that. And then explain that plan to the patient so they are on the same page. And it's not a dictatorship, of course by any means. We call it shared decision making. So we have to educated the patient as to why we are doing what we do, so they are understanding what we are doing for them and why. And sometimes they are more than one option in a situation and so that's where that shared decision is really important so they can help guide what they want. What their expectations, needs and what they feel is reasonable because we are not always in agreement.

Q When you create your differential diagnosis -- when a reasonably prudent physician creates a differential diagnosis of the possible causes or in this case a lesion, which ones are concerning and need to be really focused on?

A Well, we always, you know, you always want to think the worse things first. And they're not usually the most likely, but you always want to worry about what's going to cause the most harm for a person. So anytime we see a lesion the first thing that pops up in our head is, is this cancer or precancer and with experience, and expertise you know, you kind of get that gut feeling on how likely something is. You don't know until you have pathology. As I mentioned earlier, the only way

way to diagnose and know something is with pathology. But, yeah, you always think about the red flags and stuff that is really going to bring harm to somebody is.

Q Could a reasonably prudent physician if they were entertaining precancer or cancer but thinks it's remote not work that up?

A No. So the patient comes to you to for a problem. You need to figure out what that problem is. You may not be able to make that diagnosis that second that you're sitting there with a patient but you follow through to figure out what the diagnosis is and to finish the treatment to the patient.

Q If you got your list and cancer is on that list, how do you go through that list?

A Well, you talk to the patient. Tell them what your thoughts are in this situation. What you feel is most likely, but you also tell them what could concern you about the situation and then you need to try to institute a plan to reverse whatever the potential cause was or to treat the area if there is no obvious cause.

Q We heard the term rule out. Do you use that term?

A Yes, I use that term a lot.

Q Tell me what that means?

A Rule out means we got to eliminate something as a possibility.

Q And how can you go about doing that?

A Well, one way to rule out something, you know, as I mentioned earlier to get a tissue. To get a biopsy of something. As I mentioned, you can't diagnose something without that. You can be as suspicious as you want but without the pathologist assistance and that biopsy that is our way of fully evaluating something.

There are times when people can have a lesion, a pathology, that may regress on its own too. So follow up is important too.

Q Can follow up help rule out?

A Oh, absolutely. If you see something disappearing in front of your eyes we all had a sore or a wound of some sort. We don't obviously have to cut everyone's wound and lesions that we see. We follow it and we watch it ourselves and see something disappear.

Q And if this list on a differential includes potential cancer, is there a level of urgency about when you're going to do a biopsy or when you're going to do a follow up to rule out? Talk to us a little bit about timing?

A Yeah, I mean, some things will tell you it's cancer the second you look at it. You know, somebody has a large it looks like mushrooms growing out of their tongue. Right then and there you kind of know what's going on right then and there. There are other times when things are much more subtle. Whenever we are thinking about more subtle lesions, cells turns over typically about two weeks for the lining of our skin in our

mouth so you want to see somebody back around that time period, you know, plus or minus a few days given scheduling issues and follow along with that. If it's not improving by that point then a biopsy would be warranted.

Q Okay. Under the standard of care what's the obligation about communicating to the patient?

A As I mention earlier that's what we do as physicians. We're physicians first. We are surgeons second, but we're educators to. You don't have to be teaching residents to be an educator. You educate your patients at every interaction with them.

Q And what about under the standard of care, what is the obligation to communicate with the referring physician or doctor that sent you the patient?

A I think that's extremely important to do that. Send your letters back, detail your entire note. I use to send my entire note straight to the referring physicians and I ask if there is anybody else that they want to receive a note because sometimes there is somebody that is involved in their care. So I send my entire letter to them with everything that we talked about. Everything that we were thinking and what we did with our shared decision making plan.

It only behooves the patient that we do such feedback with the other physicians no matter what their field of practice is.

Q Under the standard of care, what is the obligation by a

reasonable, careful and prudent physician, oral surgeon, regarding appointment, follow-up appointment?

A Well, as I mentioned earlier, you need to see the lesion, the problem that they're coming to see you and see it end. You know, if it is something that you don't treat or can't treat then, you know, you need to find somebody that does. So you have to have follow up through with the patient in order to find a resolution for their problem. So you take ownership of them.

A How do you take ownership? How do you follow up.

A You make a schedule appointment for them at that time. You tell them flat out this is what's going on and I want to see you back to evaluate you in X amount of days or weeks.

Q And under the standard of care for a reasonably prudent oral surgeon, what is the obligation to document that in the chart?

A That's not just for not an oral surgeon. That's every doctor. Your note is your way of organizing your thoughts. It's the way you manage your patient. It's the way you communicate with your patients, with your staff and with other physicians. If it's not documented I've always been taught it never happened. It doesn't exist.

Q Where were you taught that?

A Every day of medical school.

Q You talked about under the standard of care doing a

differential diagnosis. You talked about formulating a plan. You talked ruling out. You talked about return appointments. You talked about informing the dentists who referred the patient himself. You talked about documenting. Those kinds of things, do they have a patient safety aspect to them?

A Oh, absolutely. I think that's the point I was trying to hammer home with. We do all this for the patient. For everyone of you when we see you. It's taxing, you know, to make these notes and keep everything straight, but it's part of the job of taking care of people. So it's only for the patient safety and benefit that we go through all of that.

Q And this idea of patient safety, how does that relate to the standard of care?

A Well, I mean the standard of care is designed to keep patients safe. That why we think of something out of a certain level of care. You come to see us. You expect care. You expect trust. You expect a working relationship, and doing all of these things helps to facilitate that. Keep you safe.

Q I want to talk to you about Tom, Tom Lovelace. Can you talk to us a little bit from your review of the records about your understanding of Tom's presentation to Doctor Renner, the dentist and then Tom's presentation to Doctor Billman on the May 13, 2015 visit?

A Yeah, from what I recall of the records, Mr. Lovelace presented to his dentist and stated that he had an area on the

right lateral, side of his tongue. That was bothering him. I think he felt that he might have bit it approximately two months prior. And the dentist noticed an area next to there. I don't remember if his exact word was lesion or ulcer. I don't know the exact wording. Still has pain. Yeah, he doesn't have a description I see in this page right here. But then because the dentist didn't like the look of it, he referred the patient over to Doctor Billman to take a look at the tongue.

Q Okay. And did you get an understanding of Doctor Renner's assessment of the size?

A It says here four by three millimeters.

Q And where was this lesion? Your understanding of where the lesion was?

A Adjacent to tooth number 32 which is your back molar. So down by the right, like I said, posterior. Further back in the mouth, lateral side of the tongue.

Q And on the bottom jaw?

A And on the bottom adjacent to your wisdom tooth.

Q So tell me about your review of Doctor Billman's visit with Tom?

A Doctor Billman recognized that there was an area that was concerning on the tongue. He felt that the area was traumatic and likely due to an irregularly positioned and shaped tooth number 32.

Q Okay. And I put up here his record and can you see his

record that you have with. And where did Doctor Billman see this lesion? Where was it in the mouth?

A It says right her there, right lateral border tongue ulceration, traumatic number 32. So he believes it is a traumatic ulcer due to tooth number 32.

Q And what was his plan according to the record?

A His plan was to send the patient back to the dental group to either have the tooth restored, shaved, smooth so it didn't feel rough or irregular or have the tooth extracted. He was deferring to the referring dentist for management.

Q Let's look at this record for a moment, and I want to ask you, do you believe that this record -- your review of it, did Doctor Billman -- do you have an opinion most probably whether Doctor Billman complied with or deviated from the standard of care in evaluating this lesion?

A The issues that I have with the deviation of the standard of care in this record is there's no differential diagnosis. There's no discussion of potential malignancy or cancer in this situation. There was no defined follow up for himself to insure that the lesion for which he was referred ever got addressed and went away.

Q What would you have expected if there had been consideration of the differential diagnosis?

A I mean, I would expect that he would alert Mr. Lovelace the possibility that something like this while may not be cancer

Q Correct. And when the patient, Mr. Lovelace, presented to Doctor Billman's office on May 13,2015 is it true that you agree it was reasonable for Doctor Billman to think this could be all related to the sharpness of the tooth or the malpositioned tooth?

A It's reasonable to think that could be a cause.

Q And it was reasonable to try to remove the source of the irritation before proceeding to a biopsy stage, correct?

A Yes.

Q That was all reasonable to the extent Doctor Billman said, I think this could be caused by the sharpness of the tooth, or I think this could be caused by the malpositioned tooth. It was reasonable for Doctor Billman to say, let's address that first, correct?

A Correct.

Q And you talked about a concept called ruling out. That's ruling out, correct?

A No, that's not ruling out. To rule out would be you would have to have some kind of confirmatory either follow-up examination or biopsy to rule out.

Q Thank you. That level of detail, thank you for that. I was much too short handed when I said that.

When Doctor Billman saw the patient on May 13th and concluded I think this sore could be related to the sharpness or it could be related to the malpositioned nature of the tooth, it was

appropriate for Doctor Billman to say let's address that potential cause, first and see if that takes care of it, correct?

A Yes.

Q You did read Doctor's Renner's deposition, correct?

A Yes, sir.

Q And Doctor Renner -- to make sure we are all on the same page, is the dentist who originally sent Mr. Lovelace to Doctor Billman, correct?

A Yes.

Q And do you recall when you read Doctor Renner's deposition that Doctor Renner said he was aware from the letter Doctor Billman wrote that Doctor Billman was trying to rule things out and figured out what was causing this lesion?

MR. KASSEL: If Your Honor please. Doctor Renner has testified.

THE COURT: Hold on one moment.

MR. KASSEL: And his testimony should speak for itself and Mr. Coles had an opportunity to cross examine Doctor Renner and so I think that's what the record should be in front of this jury.

THE COURT: Let me hear the entire question before I make a ruling.

MR. COLES: And Your Honor, this is an expert witness who reviewed Doctor Renner's deposition and is

Q So to be crystal clear on that, when it comes to Doctor Renner and Doctor Greiner based on your review, open quote, a very disappointing breach of the standard of care, correct?

A That's correct.

Q And you also said, "Very lazy in their practice. They clearly didn't take care of this patient."?

A That's true.

Q We talked about Doctor Renner and Doctor Greiner. Let me briefly ask you, do you recall Doctor Perlow?

A Yes.

Q I'll remind you she was a dentist at that same office?

A Right.

Q Do you recall you were critical of her?

A Yes.

Q Tell the jury why you were critical of Doctor Perlow?

A From my recollection of the interaction Mr. Lovelace was at the dental office, York Dental, and requested a refill on a medication, an antibiotic mouthwash call Peridex. So he had requested a refill on that and Doctor Perlow provided him a refill with no questioning, no examination, no follow-up.

Q And when Doctor Perlow had that interaction with Mr. Lovelace nobody alerted Doctor Billman to that, correct?

A Correct.

Q And when Doctor Greiner smoothed the tooth as Doctor Billman asked them to do, no one followed-up and told Doctor

So, I reviewed the records of York Dental, the Center for Oral and Maxillofacial Surgery, the records of Doctor Brick man, the records of Doctor Fisher, Doctor McCannon, Doctor Patel, Piedmont Medical Center, CMC Hospital and the EFAA records.

I've reviewed depositions of Doctor Billman, Mr. Lovelace, Mrs. Lovelace, Doctor Renner, Doctor Greiner, Doctor Perlow, Doctor Lecholop, Doctor Day, Doctor Spalla and Doctor Simpson.

Q Okay. Who is Doctor Lecholop?

A He's the expert on the defense side. He's Chairman of the Department of Oral Surgery at -- Medical -- MCS.

Q MUSC?

A Yes. MUSC. Sorry.

Q And who is Doctor Day?

A He is also in that faculty in the Department of ENT.

Q I want to ask you about the visit with Tom and Doctor Billman on May 13, 2015. And if we can put that up on the screen and that is exhibit three.

I want to ask you about that visit. Tell us -- and can you see that screen Doctor Fonseca?

A Yes, I can.

Q And there are -- what I call translations off to the side so you can read it if you have any trouble.

A Good.

Q What was Doctor Billman's job after he was -- after Tom was referred to Doctor Billman by Doctor Renner?

A Doctor Billman's job was to diagnose the lesion that was on the tongue.

Q And what history does he get?

A Well, first of all, Doctor Renner just sent a slip and it says evaluate right lateral tongue. So he didn't get very much from that in terms of what he was suppose to do. As an Oral and Maxillofacial Surgeon if you have a lesion that somebody has referred to you it's your obligation to come up, develop -- get a history. Develop a differential diagnosis and then figure out what the diagnosis is.

Q Was history did he get?

A That it had been present at this time now been present for seven weeks. When he saw Doctor Renner it was present for five weeks. That it was a -- and he had bit his tongue five -- seven weeks from this time and that there was an ulcer in that area. That's the extent of the history. There's no description of the size on this one or how it appeared.

Q Would you typically expect that?

A Yeah, it would be good to document that for somebody. This was a multi-oral surgeon practice so down the road Doctor Billman may be on vacation and Doctor Simpson may see him. It would be good to know what size it was, what it looked like so that you could compare. That's one of the benefits of documentation.

Q What did Doctor Billman based on his records conclude?

A That this was a traumatic ulceration based on having to do with tooth number 32.

Q And this record is dated the day of the event?

A Correct. It should be 5/13/15 and it is.

Q And did Doctor Billman prescribed any medication?

A At this time he -- I'm seeing if he put him on Peridex? I think he put him on Peridex. I don't see that though. Wait.

Q I see RX.

A Where do you see?

Q At the bottom right.

A Yes, at the bottom right. Peridex.

Q Per log.

A Per log which means I think prescription log.

Q And what is Peridex?

A Peridex is chlorhexidene. It's an anti-microbial, anti-inflammatory rinse. A lot of dentists and periodontists use it to decrease peridontal disease. It decreases inflammation. So, makes the patient a little bit more comfortable. Takes away some of the pain because inflammation -- some of the toxins that come out of inflammation will elicit pain. So it's comforting.

Q Okay. And what was the treatment plan that you see on this record made on the date of the visit?

A For him to go to the general dentist and consider recontouring or extraction of tooth number 32.

Q And what is your understanding of why that's the recommendation?

A Because Doctor Billman thought it was due to the tooth having a sharp cusp and a being lingual version. Tilted towards the tongue.

Q When we look at this document from May 13th, do you see any evidence that Doctor Billman made a differential diagnosis?

A No.

Q Do you see any evidence of potential causes he considered other than trauma?

A No. There was no differential diagnosis on this sheet.

Q And why do you say -- why do you say he didn't consider anything other than trauma?

A Because that's all he wrote down.

Q And what would a reasonable, careful, prudent practitioner have written down if they were considering --

A Their differential diagnosis. In this case specifically it would have been precancer, cancer, and a traumatic ulcer.

Q Do you have an opinion most probably whether Doctor Billman complied or violated the standard of care regarding formulating a differential diagnosis?

A Yes, I do.

Q What is your opinion?

A He did not.

Q He did not what?

A Develop a differential diagnosis.

Q And is it that breach of the standard of care?

A Yes, it is.

Q And in your view -- I think you answered this, but what would a reasonable and prudent physician have put down as part of a differential diagnosis on this presentation?

A Precancer, which under precancer you have dysplasia and under dysplasia you could have mild, moderate, or severe, carcinoma in situ, but all have you to do is put precancer. You don't have to list all of those. Cancer and a traumatic lesion.

Q When you is look at this record that Doctor Billman wrote on the day that he was visiting with Tom, do you see any action in this letter -- in this note that would allow you to conclude he was making a plan to rule out cancer?

A No, I don't see anything in these notes.

Q If he was actual considering cancer or precancer on May 13th, what would have you expected a reasonable practitioner, careful practitioner to have done if they had that differential?

A To document on his record that was one of his concerns on his differential.

Q And then how would you expect that doctor to test? That was the word you used, test. Test or rule out?

A Well, he could have gone straight to a biopsy. It had been present for seven weeks. The rule of thumb that we have in

he's is the patient -- one of the patient's experts.

Q He's and expert for the patient as you are, correct?

A Correct.

Q And Doctor Spalla is an ENT facial plastic and he told the jury yesterday he has a certain expertise in treating cancers of the face?

A Yes.

Q Do you generally know that?

A Yes, I do and he's from Cooper Hospital in New Jersey.

Q And one of the things Doctor Spalla told this jury was that based on all of his review of the records as of November 2015 the patient did not have invasive carcinoma.

A That was his opinion.

Q Yes, sir. Do you agree with that opinion?

A No.

Q You disagree with Doctor Spalla?

A I agree with what Lo -- what's is the oral surgeon's name at MUSC -- Papalus.

MR. KASSEL: Lechelop.

Q I'm not sure who you are referring to.

A Lechelopus.

Q Okay. Have you read Doctor Spalla's deposition?

A Yes.

Q And one of the things Doctor Spalla told this jury yesterday was that it was the right decision by Doctor Billman

at the beginning to suggest smoothing the tooth. If that was the patient's preference and if that didn't work to extract the tooth. That was the right call to make? Do you agree that was the right call for Doctor Billman on to make?

A Yes.

Q And Doctor Spalla told this jury yesterday that if the tooth had been smoothed and then perhaps extracted the cancer never would have happened. Do you agree with that?

A I don't disagree or agree with it. We don't know. There's no way of knowing.

Q So -- and I realize I'm asking you to accept what I'm telling you and the jury heard it yesterday. They're the final judge of what was said or what was not said. But if Doctor Spalla said if the tooth was smoothed or extracted the cancer would not have happened, you Doctor Fonseca are saying I neither agree nor disagree with that. Is that correct?

A Correct because his assumption was that there was a biopsy. That we knew what it was. We didn't know what it was.

Q When you read Mr. Lovelace's deposition do you recall that one of the things Mr. Lovelace said was that he categorically denied that Doctor Renner or Doctor Greiner ever mentioned cancer?

A Or biopsy.

Q Yes, sir.

A Yes, I recollect that.

angry lesion, he was in the best position at that time to know what was going on with the patient, correct?

A Correct.

Q And you told us that as a dentist he absolutely should have told that patient to come back or told that patient get over to Doctor Billman?

A Correct. That's what I said.

Q Just a few more questions, sir. Do you recall in your deposition that being asked, based on everything you've read, specifically what Mr. Lovelace has testified to, after the tooth was smoothed by Doctor Greiner on November 18, 2015, the area according to Mr. Lovelace seemed to go away and he wasn't having any problems?

A I don't think he said it never went away.

Q Correct. This is not a memory test. I'm not trying to put you on the spot, sir.

A Right.

Q I am just saying do you remember in your deposition when you were asked that you said after the tooth was smoothed Mr. Lovelace seemed to think the problem had resolved and there was no issue at that time?

A Well -- my interpretation of what I said is that it got better. He said it got better.

Q Correct.

A Better is not gone away.

Q So on the November 11th visit you asked Doctor Greiner could he go ahead and smooth the tooth down, correct?

A Correct.

Q And he wasn't able to do it on that visit?

A No, I had to make an appointment.

Q And so you made an appointment for a week later?

A Correct.

Q And you came to that appointment?

A That's correct.

Q And tell us what is the smoothing down of the tooth like? What is that process like?

A I don't think I could explain it better than the dentist that was here the other day. It's a high price dremel tool and it surprised me a little bit because there was no sedation involved. There was -- and there was no pain. It was just he went in. He trimmed the tooth, smoothed it and I think they referred to as contouring, but he smoothed I guess the sharp area. I doubt I was in -- from coming in the door to leaving I probably wasn't there 15 minutes.

Q After Doctor Greiner finished smoothing the tooth did he say you got to go back and see Doctor Billman?

A No, he didn't say anything.

Q Did he tell you that Doctor Billman wanted to see you back?

A No.

Q Did Doctor Greiner tell you to come back so he could look at this spot on your tongue again?

A No, I had an appointment scheduled, a six-month routine.

Q And that's a good point. On November 18th when you left Doctor Greiner's office a routine -- a follow-up appointment was made, is that right?

A It was probably made on the 17th.

Q I'm sorry. I changed stuff on you.

A It was probably made on the 17th. The chart you have on the initial visit where we see Doctor Greiner.

Q On the eleventh?

A On the eleventh, I'm sorry.

Q That's okay.

A Because when you go in for a routine cleaning your appointment is made six months in advance and you really don't have any idea what your schedule is six months in advance. So I would say on the 11th an appointment was made for six months later, yes.

Q And then on the 18th there was no follow-up appointment made or even recommended to you?

A No.

Q If Doctor Greiner had said, I want you to go back and see Doctor Billman so he could look at this lesion now that we smoothed your tooth would you have done that?

A Certainly.

Q If Doctor Greiner had said I want you to come back to me in a week or two so I can look at this spot would you have done that?

A Yes.

Q When you left Doctor Greiner's office in November of 2015, were you concerned at all about this spot on your tooth -- you spot on your tongue?

A I had no reason to be concerned, no.

Q So Doctor Greiner again did not express any urgency to you about this tooth or this spot on your tongue?

A That's correct.

Q After you had this tooth smoothed did it help at all with the rubbing on your tongue?

A It may have helped, but again, because the tooth was a tooth, again, it wasn't something I was concerned with. It just wasn't causing me a problem. It wasn't painful. It was just like a say it was just like a place there. It was a place.

Q Did that change at some point? Did the lesion become painful?

A The lesion in June of 2016 became very painful over three -- three, four week period became very painful very quickly. It was like a sore had just opened and it was irritated with everything I did from eating to speaking to talking. Yes, so over a period in June of three or four weeks

it just blew up so to speak.

Q And what did you think was going on in June when the pain kind of really started in earnest?

A I thought it was a tooth problem. That's what I had been told. That's what I had been assuming for 12, 13 months. It was a tooth problem. I assumed the tooth had either sharpened itself again, some way, or it had moved around to the point where it was cutting my tongue very badly now you.

Q And what did you think you were going to have to get done to deal with the pain?

A The next step in Doctor Billman diagnosis was to have the tooth extracted.

Q So is that what you thought, the smoothing didn't work so we will have to go to the extraction next?

A That was my thought, yes.

Q The jury has heard a little bit about you going to Doctor Renner's office on July 7th of 2016. Do you remember that?

A Yes, ma'am.

Q Tell us about that visit?

A Through June when my tongue just kind of blew up there, I went by my dental group and I explained to the receptionist there. I don't know them friendly wise, but they recognized me as a patient and I them. And I explained to the receptionist that I been to see Doctor Billman. I had been given a rinse for

my tooth that was rubbing my tongue and I would like to get a prescription for this rinse. I don't remember the name of pp Peridox -- or pera -- whatever it is. And the receptionist says I will need to get a dentist to see you. So I said okay. So I'm waiting there at the check-in in the lobby and a lady dentist comes out that I've never met. It turns out her name is Doctor Perlow. I never met her and she says what do you need? What's going on? And I told her what I told the receptionist. I had been to see Doctor Billman a year before then and I had this tooth that was sharp that was cutting my tongue. He had given me some rinse and its cutting me very bad now and could I get a new prescription for this rinse. And she essentially especially by today's standard in the medical field I think -- and I'm not in the medical field but from what I understand, she gave me an excellent telemed over the counter even though she didn't look in my mouth. I told her what the problem was I thought and she said, okay. And so she allowed me to get a prescription.

I told her that Doctor Billman told me to have that tooth smoothed and it was cutting my tongue again pretty badly now and Doctor Billman had recommended that if smoothing the tooth didn't remedy the problem that the tooth would have to be extracted. I said I need to go back to Doctor Billman to get the tooth extracted and her comment was we can do that here. So she did give me the prescription and I went about my business

and I got the prescription filed.

Q Did anyone from Doctor Renner's office call you back after that visit? How did you come to see them again?

A In a period of a couple of weeks I did get a call from York Dental Group, Doctor Renner's practice and the young lady asked -- the young lady asked me --

Q Take your time. Do you need to take a little break?

A The young lady that called me from York Dental Group says the doctor would like to know how the sore in your mouth is and I told her. I said it's still there but I got about two weeks of rinse to use because the bottle last three or four weeks. It's just one rinse a day and I said I got about two weeks left and if it's not better by then I was going to call and come in and see you. So the young lady that called me said Doctor Renner would like for you to come in as soon as you can. So again, we looked at our schedules, his and mine. Again no urgency see other than he would like for me to come in. So we scheduled a visit with him it looks like August the 11th and that would be about right, yes.

Q Tell us about that visit with Doctor Renner on August 11?

A That was not a routine visit. It was not a dental hygiene visit. That was strictly to look at the place on my tongue. He looked at it. His assistant may have been in there. He look at it and he said I would like for you to go back to the

Any time -- and I've been to several specialists over the years -- any time I'm referred to a specialist to look at a problem or situation or something that's questionable, I have concern of what the results of that meeting will be, yes.

Q All right. And do you recall how long your visit, your encounter, your meeting, whatever you want to call it with Doctor Billman was on May 13?

A It was not long. I would say 20 minutes.

Q Twenty to thirty minutes do you recall saying that?

A That would be reasonable from the time that I got there to the time that I left, yes.

Q Okay. And I'm talking about the actual you and Doctor Billman's presence is that, do you recall about 20 minutes roughly?

A At the most roughly, yes.

Q And do you recall Doctor Billman looking in your mouth?

A I do.

Q And do you recall Doctor Billman telling you I think first thing, we should either smooth this tooth or have it extracted?

A After he looked in my mouth and set back in his chair, that's correct.

Q And the tooth we're talking is tooth 32, correct?

A Yes.

Q It's the last -- the wisdom tooth. The last tooth on

the bottom on the right, correct?

A That's my understanding, yes.

Q And when Doctor Billman discussed with you smoothing the tooth or taking it out you had a very decided preference, correct?

A My initial preference would be the easier of the two, yes.

Q I'd be the same way. And what was your preference?

A To have the tooth smoothed.

Q And do you recall Doctor Billman explaining to you that he couldn't smooth the tooth in his office?

A He was unable to smoothed the tooth in his office or I would have had it done there, yes.

Q And do you recall Doctor Billman telling you that he could certainly extract the tooth if that's what you wanted?

A I do, yes.

Q And you made it very clear to Doctor Billman that at that time you did not want the tooth being extracted, you wanted to try to smooth it first, correct?

A Correct.

Q And you do recall that Doctor Billman on May 13, 2015 said to you, let's get it smoothed and if that doesn't work we're going to extract it. Do you recall him saying that?

A He said, yes, let's smooth the tooth. If that doesn't work we will have to extract it.

Q All right. And to make sure there is no doubt here, Doctor Billman told you on May 13th that the tooth needed to be extracted if it kept irritating the tongue, correct?

A If smoothing it out didn't work, yes.

Q Thank you. Your exactly correct. Doctor Billman said the first thing we are going to do is you are going to get the tooth smoothed to see if that stop irritating the tongue, correct?

A That would be correct, yes.

Q And Doctor Billman told you if that smoothing doesn't take care of the irritation the tooth is going to need to be extracted, correct?

A Right.

Q The jury has heard this already but I am going to ask you and your counsel told you I was going to ask you this question. In your deposition when you were asked did Doctor Renner or Doctor Greiner mention cancer to you, you said absolutely not. They did not do that. Do you recall that?

A Correct.

Q And then when doctor -- you were asked did Doctor Billman mentioned cancer to you, you said I can not deny that. I don't remember it but I can not deny it. Do you remember that?

A Is there any more to that answer?

Q Let's look at. That's a very good point. In fairness

to you let's bring up its page 72, line 22.

MR. COLES: And Your Honor, if it's better for the witness I know he has screen, we can get him the transcript if it's okay with Your Honor, so he can hold it in his hand.

THE COURT: Either one. Whatever the witness prefers.

A The screen is fine.

Q Okay. Sir, page 72 is up there and I will tell you that your answer goes on to page 73, but I'm going to be quiet until you look at whatever you want to look at and you tell me you're ready.

A Okay. I read that.

Q Okay. Let's please go back to page 72 and if we can at line 13 down at the bottom enlarge that. And Mr. Lovelace, you had a chance to read this, correct?

A Yes, sir.

Q Okay. So now I'm going to ask you to look at screen and pick up with the question that begins on line 13. "Do you recall Doctor Billman talking to you about cancer?" Your answer was, "In that visit." And let's stop here for a minute. We're talking about the May 13th visit. You can look at anything you want in that deposition but do you it understand that?

A Yes, sir.

Q Your answer was, "No." The next question, "Do you deny

that Doctor Billman talked to you about cancer at that visit?" Your answer, "I can't deny it. I don't remember the cancer word even being mentioned in that."

The next question, "But you can't deny that Doctor Billman told you that?" And if we can please go to the next few lines. Seventy-three, lines one through six. And so the question that we just left on page 72 was, "But you can't deny that Doctor Billman told you that?" And your answer, "No." Question, "You just don't remember?" Answer, "That's correct." That was your testimony, correct?

A Could you go back to page 72.

Q Absolutely. And again sir, if you want the paper copy we'll get that to you so you can flip through anything you want to see.

A Thank you. At line 13.

Q Do you want that enlarged?

A No, I see it. Line 13 it says, "Do you recall Doctor Billman talking to you about cancer?"

Q Yes, sir.

A And I said, "In that visit?" and Miss Scalise said, "Yes, sir." The witness being me, "Do you recall?" My answer is "No."

Q Yes, sir. We read that. You said, "No, I don't recall it." And then the question was, "Do you deny that Doctor Billman talked to you about cancer at that visit?" And read

along please at line 22, your answer was, "I can't deny it." Do you remember that?

A I see it here, yes.

Q And when you were asked the same question which I'll show you if you want to see it. When you were asked the same question about Doctor Renner and Doctor Greiner, if they mentioned cancer you said, "Absolutely not. I deny it." And you were asked, do you deny it and you said "Absolutely, they did not say the word." Do you recall that?

A Yes.

Q So clearly when you gave your deposition you were absolute that you were saying Doctor Renner, Doctor Greiner did not mention cancer, correct?

A Correct.

Q For Doctor Billman you very honestly said, "I don't remember it." Correct?

A Doctor Renner was not in a position to diagnose cancer. So the word never came up with Doctor Renner. In visiting Doctor Billman if Doctor Billman had used the word cancer, cancerous or anything like that, I would not have left his office without calling my dentist and getting the work done that he requested and then seeing Doctor Billman.

Q Okay, sir, and I'm going to be -- and I hope I have been with every witness very respectful. But in fairness, when you were asked that question in your deposition you simply said,

"No, I can't deny it." Isn't that what you said?

A Yes.

Q Now, when you left Doctor Billman office on May 13 of 2013 you knew that the treatment plan was have this tooth smoothed and if that doesn't take care of the irritation have it extracted, correct?

A Yes.

Q And as I told other witnesses, this is not a memory test, but do you remember from May 13 how long it was before you went to see your general dentist about having the tooth smoothed?

A It would have been in November of that year.

Q You were in the courtroom when Doctor Renner testified yesterday, correct?

A Yes, sir.

Q Do you recall that Doctor Renner said Doctor Billman, the letter Doctor Billman wrote, that that was received in Doctor Renner's office and placed on his desk. Do you recall that?

A Yes, sir.

Q Do you recall Doctor Renner saying in addition to that letter being placed on his desk it went into their electronic system?

A Yes, sir.

Q And do you recall Doctor Renner saying absolutely

A Do I recall him accessing the letter?

Q Yes, sir.

A I do not recall him getting a letter, no.

Q Okay. I'm not going to wast time with that then. But you do recall discussing with Doctor Greiner what Doctor Billman had recommended back in May?

A Yes, sir.

Q And then Doctor Greiner was not able, no doubt due to time constraints, to do the smoothing that day, correct?

A That was my understanding, yes.

Q So you came back a few days later, correct?

A Yes, sir.

Q I think it was November 18, but I'm not positive. We have it here.

You came back to have Doctor Greiner smooth the tooth?

A Yes, sir.

Q Do you recall again Doctor Renner when he testified yesterday, Doctor Renner said, Doctor Greiner described what he saw. What he, Doctor Greiner, saw on your tongue as angry or ugly. Do you recall that?

A I recall him saying that but I don't recall him saying it to me.

Q Okay. Do you recall Doctor Renner saying that if Doctor Greiner had not told you come back in a week or two after we smoothed the tooth that that was an absolute mistake on

prescription -- I think it's called Peridex that you mentioned, correct?

A I think so, yes.

Q And that dentist gave you that prescription. You walked out and she didn't look in your mouth at all, did she?

A No, she didn't.

Q And did she ask you to come back?

A She did not.

Q Okay. So as of this June, July period in 2016, you were clearly having a fairly significant problem with this tongue, correct?

A It was painful, yes.

Q Do you recall telling us in your deposition that you never looked inside your mouth?

A I do recall that.

Q And again, in fairness to you, you said I certainly looked in my mouth after the cancer was diagnosed and I was having all this treatment but I am talking about --

A That's not -- I don't think I said that.

Q Okay. I apologize.

A A doctor made a comment about the surgery and he said, boy, they did a good job on that tongue and that's the first time I went in front of a mirror and held my tongue up to look at it.

Q Okay, and that's what I was trying to get at and that

A What note are you referring to in Doctor Renner's --

Q I apologize. I misspoke then. I was referring to the letter Doctor Billman wrote to Doctor Renner. That's one document, and then the note Doctor Billman made about your May 13 entry that he put in his records. You didn't see either one of those documents until this lawsuit was filed, isn't that true?

A I would say that's correct, yes.

Q You were relying on what Doctor Billman told you orally, correct?

A Yes, sir.

MR. COLES: Thank you, very much. That's all I have.

THE COURT: Redirect.

MS MCVEY: Yes, Your Honor, just briefly.

Q Tom, Mr. Coles just asked you if you got a copy of Doctor Billman's records. Do you remember that?

A I remember that.

Q At the time of your visit?

A Yes.

Q Did you get a copy of Doctor Renner's November 11th -- I'm sorry, August -- April 30th, 2015 note where he writes biopsy in it?

A I did receive a copy but it was way after the facts.

Q Right. You didn't get it when you left the office on

MR. KASSEL: Thank you.

MR. TIERNEY: Thank you. Your Honor, the next motion would be for a directed verdict, with respect to the plaintiff's failure to prove the requisite elements of the negligence claim. Obviously, there has to be testimony about the standard of care, deviation from the standard of care and proximate cause of injury, we would submit to this Court that the testimony from the witness stand by Doctor Spalla, plaintiff's first expert, was that Doctor Billman's treatment plan to smooth and extract the tooth was the correct treatment plan. He answered yes to that question when asked on cross examine by Mr. Coles, whether or not he thought the treatment plan was correct. Doctor Spalla said yes. The second question was, Doctor Billman figured that out in 20 to 30 minutes, correct? Doctor Spalla agreed with that point. And then Mr. Coles asked Doctor Spalla if it Mr. Billman -- if Doctor Billman's plan had been followed there would be no cancer and he agreed with that.

So, in essence he agrees with the fact that the treatment plan was correct. That if it had been followed out correctly then there would be no cancer and therefore I don't believe that they have met their

THE COURT: I respectfully disagree. I am going to deny the motion.

MR. TIERNEY: Thank you, Your Honor.

THE COURT: Other than the charge, anything else we need to take up?

MR. TIERNEY: Yes, one interesting item we noticed this morning and I think it's something we can fix. This is on -- and this would be just for the Court's reference, in evidence this would be part of Doctor Billman's record which I believe is defendant's two.

THE COURT: Is Doctor Billman's complete record.

MR. TIERNEY: Yes, sir. On his examination form we were required by the Court to redact any information relative to alcohol or smoking. We spoke with Your Honor at the beginning of this case about what Doctor Billman's common course and practice is when he is doing an initial examination with a patient and obviously he asked about past medical history and Your Honor said that Doctor Billman, respectful of the ruling of smoking and alcohol can't go into the fact that he asked patients about their past medical history. He asked whether they smoke, whether they drink and all that information. Well, on the record the way it's redacted and I believe this is a blowup of that particular record where it says pertinent

family medical history slash smoking history, with the redaction it looks like Doctor Billman never asked that information and it leaves this void to the jury where they go back there and they look at the evidence and they think, well he just testified that he says he does this in his initial work up of a patient and we're looking at the record and it's not on there. So I have a solution.

THE COURT: Okay. I'm don't know if I was a juror if I would know what these terms mean.

MR. TIERNEY: But he's going to testify to it.

THE COURT: He's going to testify that's what those mean.

MR. TIERNEY: Yeah, he's going to go through this record in front of the jury as to everything.

THE COURT: I don't think where going -- what I thought I was saying is you are going to ask him what he does and along the list of things he says and I ask about that.

MR. TIERNEY: That's right.

THE COURT: But if he's going to point to that and say I'm asking about smoking history. That's not what I intended.

MR. TIERNEY: He's going to be asked to go through what his routine is when he examines a patient and

meets with the patient. He's going to say of course I ask what their past medical history is, but the point is that, as part of the past medical history it's right here on his form. He asks about that information. They're going to go back there and they're going to see a blank space and it's going to look like he didn't ask that question when clearly asked that question.

THE COURT: What are you proposing, Mr. Tierney?

MR. TIERNEY: I propose that the record that we had originally where it's just redacted in black goes back there so they know that question was asked and discussed. They don't get to see what the answer was whether or not he smoked 12 years ago or whatever it might be they see that in black there was something written there so obviously he asked the patient about that. I don't think if you don't get that then it implies to the jury that he didn't ask that and that's not a small insignificant point that a doctor who is seeing a patient for a lesion on his tongue wouldn't ask whether or not he had a prior history of smoking. I mean, that's a very significant point. That would infer to this jury that he's careless in his questioning of the patient. I mean, of course, when someone walks in the door and they say they got a

lesion on their tongue you're going to ask whether or not they're a smoker and by putting this record in it looks like he didn't ask that question and they can use that response to say, look, this was a haphazard examine that he did. He didn't even fill in that portion. And it's not just smoking. It's his additional history that got redacted as well.

MS. MCVEY: Number one, Your Honor, I don't think we're going to insinuate in any way that he didn't ask about the medical history.

MR. TIERNEY: I haven't finished yet.

THE COURT: Go ahead Mr. Tierney.

MR. TIERNEY: It's not about insinuation. It's what you see. It's that we're asking him whether or not he takes a past medical history and we're going to ask him what he asks as far as past medical history and he's going to say, you know, I asked if they have heart disease. I ask them if they've had lung problems. I ask them if they smoke. I ask them about alcohol. And they're going to get this record back here and they're going to say, oh, you know what, he said he said it but it's not on there.

THE COURT: How would they know what FMHSHX means.

MR. TIERNEY: Family medical history.

THE COURT: I would not have known that. I

definitely would not have known what SHX means.

MR. TIERNEY: Smoking history.

MS. MCVEY: What are you talking about?

MR. TIERNEY: Right here. (Indicating)

MS. MCVEY: So that's there. What's the problem?

MR. TIERNEY: It's whited out.

MS. MCVEY: It's supposed to be whited out.

MR. TIERNEY: You're missing the point of the whole argument.

THE COURT: Slow down counsel. Mr. Tierney, I understand what you're saying is you want it clear to the jury that something was redacted so it is not attributed as an oversight by Doctor Billman.

MS. MCVEY: One problem is that we used this entire exhibits the entire trial and they've have been up on this board and up there for the entire trial. So now they're going to see this big black thing which makes no sense when we've been showing this exact thing. They can ask them what he went through and all that kind of stuff.

THE COURT: I understand your argument but I am going to deny the request. I just -- I mean, that to me is not an important point.

The issue is what he told Mr. Lovelace about the follow up. Whether he warned him about cancer. What

he wrote there on the form is not an important issue.

MR. TIERNEY: It goes to the totality of the issue which is whether or not he did a thorough exam and got a thorough differential diagnosis based on the information he got. The gravatas of it is of incredible importance as to how thorough he was which is their whole argument is that he was not thorough on that day.

MR. COLES: May I add something, Your Honor?

THE COURT: You may.

MR. COLES: And that is by removing this data from that line as effectively as it has been removed, 20 percent of what Doctor Billman wrote is being eliminated from this record. Twenty percent, if you look at the lines that he wrote. So, it is putting Doctor Billman's defense at a market disadvantage when a huge part of this case is, did Doctor Billman do a diligent job when he spoke with and met with this client, this patient, on May 13th. And the Court's order is requiring us to present to the jury a form that is inaccurate and is to a careful juror -- and the law assumes these jurors are going to be careful, they're going to look at this document that's in evidence that is very well redacted and a juror is going to say, all right. This line right here that's

been redacted that we're discussing has none, and then it has a line. Well, Doctor Billman neither circled none nor wrote anything.

THE COURT: Would you be satisfied if we just took that entire section out. There was just a blank. So it doesn't say family medical history. It doesn't say smoking history. Just the whole thing is blank.

MR. TIERNEY: No, respectfully, and I understand that, but we think it's important that portion is there based on what I've already argued. When you got someone that walks into your office with a lesion on their tongue that information needs to be asked and any juror who has gone through this process or ever had a suspicious cancer knows that is the first question that's asked.

THE COURT: No expert and no witness has alleged the history taking of Doctor Billman was not sufficient. That's not an issue.

MR. TIERNEY: I think it goes -- as I said, I will not be repetitive. I'm sorry. It goes to the totality of the argument that he didn't do a thorough exam.

My suggest would be that this is their exhibit. We have got a separate exhibit, Defendant's two I believe is this record. So they've published theirs

to the jury. We haven't published ours yet. We would like to publish ours with the black redaction.

THE COURT: Slow down. Defendant's two is in evidence and you would like to publish that?

MS. MCVEY: It's in evidence just like ours is in evidence.

MR. COLES: It is. We whited it out by agreement until we caught this issue and we would like to substitute that with a copy that's got black redactions.

THE COURT: I want to make sure I am understanding. Defendant's two that is in evidence is whited out.

MR. TIERNEY: Yes, sir.

MR. KASSEL: Yes, sir this is defendant's two.

MR. COLES: And Your Honor this came up --.

MR. KASSEL: If I can say one thing Matt. You guys just figured this out. I submitted these white redacted records to the defendant for their acknowledgment of it and then when I saw theirs that had the black we had a discussion about it and they agreed with me that these records were fine and so they were admitted into evidence. Now after they have been admitted they are raising this issue. I think this issue has been waived.

THE COURT: Counsel --

MR. TIERNEY: Can I be heard on that point rear quick. Obviously we objected to this at the beginning of this trial. So it's not waived. We objected to it. We prepared two separate exhibits ready to go on this issue so I don't believe its been waived.

THE COURT: I agree there's no waiver. But nevertheless, I am going to deny your request. I think given we're using the white out redaction having one thing that is blacked out makes it look different. It draws attention to it and it's my discretion. I will deny the request.

MR. KASSAL: Thank you, Your Honor.

MR. TIERNEY: And one last point, as we think about the afternoon, Doctor Billman was asked a question in his deposition as to whether or not today, as of June 2021 that he writes down in his record -- and I'm just paraphrasing. I'm not giving you exactly what he says. That now he writes down everything about precancer. He's going to testify that he told -- there's no secret here -- that he told Mr. Lovelace all of this stuff when he saw him in May. But he testified in his deposition that now he writes all that stuff down because of this lawsuit. Basically it's a subsequent remedial measure. We would rather

MR. KASSEL: Okay.

MR. TIERNEY: Thank you, Your Honor, that concludes our issues.

THE COURT: All right.

Counsel, have you all had time to review our first crack at jury charges in this case.

MS MCVEY: Yes, sir.

MR. TIERNEY: Yes.

THE COURT: Let's take a look.

We'll start with the plaintiff. Anything you don't like that's in here or anything that you think is mistakenly done.

MR. KASSEL: Judge, let me start by looking at the charge and saying I would like the charge -- I would like the Court to charge our request number seven.

THE COURT: Hold on one second. Let me get that. The one I have doesn't have numbers on it. If you can pass it up.

All right, for the record the proposed charges at all times the medical professional must exercise ordinary and reasonable care to insure that no unnecessary harm befalls the plaintiff.

MR. KASSEL: Patient.

THE COURT: Patient. Yes. Mr. Tierney. Mr. Coles.

MR. TIERNEY: I don't believe that's standard of care, Your Honor.

MR. COLES: Our understanding is based on what the Court said in preliminary remarks yesterday we are assuming there is a standard charge on standard of care.

THE COURT: I am looking at it right now just to see exactly. My charge says -- my proposed charge says, the laws requires the doctor use the degree of knowledge, care and skill ordinarily possessed and used by doctors in good standing. I think I'm satisfied with my current charge on that one.

MR. KASSEL: Your Honor, and thank you. This language, no one can doubt its accuracy and no one can doubt the rational sense that it makes. And it comes straight from Dawkins versus Union Hospital case, South Carolina, Supreme Court of 2014, talking about somebody who is injured in a hospital from a fall whether that was general negligence or whether that was medical malpractice and where the Court came down in talking about which one you put it in, inserts this sentence that says, however, at all times the medical profession must exercise ordinary and reasonable care to insure that no unnecessary harm befalls the patient.

THE COURT: Basically that tracks my current charge with the exception of the no unnecessary harm. That does not seem to add a whole lot.

MR. KASSEL: And I understand, Your Honor. Unnecessary harm is the essence of this case. And here it is, it's like you have done Doctor Billman's treatment plan, take out the tooth or smooth the tooth that is unnecessary harm. That subjects the patient to unnecessary harm because you didn't say all this other stuff that's missing. If you had simply done what Doctor Fonseca said and added to that letter you removed the likelihood of that unnecessary harm. I mean, if there are two ways to do something and one way subjects the patient to unnecessary harm and the second way doesn't, isn't our South Carolina law one that would say you got to do the one that avoids the unnecessary harm?

MR. COLES: And Your Honor, our position is that the standard charge the Court proposes to give covers the waterfront. So to give another charge is duplicative, unduly emphasizes the point the plaintiff wants emphasized and is inaccurate. It doesn't track the language of the standard charge the Court proposes to give.

THE COURT: Are they correct, this is a correct

statement of the law?

MR. TIERNEY: The question is, is it a correct statement of the law?

THE COURT: Correct, that's my question.

MR. TIERNEY: No, I think your charge is the correct statement of the law.

THE COURT: I mean, according to plaintiffs Supreme Court said this in the Dawkins case. Is that correct?

MR. TIERNEY: I didn't get a copy of it. I would like to read it. I'm a sorry.

I would take exception to it at this time because it's actually quoting it looks like a New York case, but specifically the prior paragraph they've only extracted a portion of it and the prior paragraph -- or the full paragraph says thus we emphasis that not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice, and consequently, the requirements of section 15-79-125, while providing medical services to a patient the medical professional acts in his professional capacity and must meet the professional standard of care as established by expert testimony and then there's this sentence that they extracted. So our position would be that I think it's

covered in your charge, but to the extent the Court were inclined to give the charge then to give the whole paragraph. You just can't extract one sentence out of Dawkins. If you're going to use Dawkins then the whole paragraph goes in.

MR. KASSEL: Your Honor, we have no problem with that.

THE COURT: Okay.

MS. MCVEY: I think you can add that to your standard of care charge.

MR. TIERNEY: Right. And in this particular case because there's testimony that Mr. Lovelace had his own duty to get follow up care that you ask the exact same sentence, but where you say, however, at all times the medical professional must exercise ordinary and reasonable care to insure that no unnecessary harm befalls the patient that you say that the patient also has a responsibility.

THE COURT: That's a different charge. There's definitely a charge on comparative negligence.

MR. COLES: But Your Honor, what we would ask is in addition to the charge on comparative negligence this charge be given. And I am going to say this simplistically, if the plaintiff is going to get to double up on their charge in their favor we would like

to double up on the charge that we perceive to be in our favor. So we would ask either give one charge on each, the court's standard charge. If the Court is going to entertain giving plaintiff's requested charge on the doctor's obligation, we would ask for what we would consider fair treatment and have the exact same language added.

THE COURT: I have a duty to mitigate charge which I think is pretty generous on that point for you all.

My proposed charge is, when the plaintiff is injured or damaged by the wrongful act of another person it is the duty of the plaintiff to reasonably try to avoid and lessen the damages. These damages which may be avoided by the use of reasonable effort, care and prudence can not be the proximate result of wrongful act. I think that covers that.

So this is what I am going to do. I am going to -- I'm not going to do a whole another charge. The sentence that says in my current draft, the law also requires that doctor follow generally practices and procedures and then I will add in, and not cause unnecessary harm. I will add that. And what was the particular language you wanted Mr. Tierney from the Dawkins case?

MR. TIERNEY: It was that first, the beginning

part.

MS. MCVEY: He wants a whole paragraph. It's just going to get so wordy.

THE COURT: I'll prefer to try to be as concise as possible. So I will insert the "and not cause unnecessary harm" that the plaintiff is requesting but if there is key language you want I'll insert that too.

MR. TIERNEY: I would agree it's covered in another charge.

THE COURT: I do -- I mean, in the standard of care charge I already say where a doctor treats a patient the law does not require perfection or infallibility.

MR. TIERNEY: Thank you, Your Honor, subject to our objection.

THE COURT: Yes, sir, of course. All right. Next from the plaintiff.

MS. MCVEY: Your Honor, you mentioned this charge earlier in our conversation, but we believe based on the facts that the defendant is pushing that it was Doctor Greiner's negligence that actually caused all this. That you add in the foreseeability charge -- foreseeability of the physician negligence charge.

THE COURT: Foreseeability of physician's

negligence.

MS. MCVEY: And that's our number ten which I can hand to you.

THE COURT: We have it. It's just not numbered. This proposed charge from the plaintiff says, the negligence of an attending physician is reasonably foreseeable. Thus, if a person uses ordinary care in selecting a physician or health care provider for treatment the law regards the aggravation of the injury resulting from the negligent act of the physician or health care as part of the immediate and direct damages which naturally flow from the original injury.

MR. TIERNEY: I find that incredibly confusing and, you know, I think your charge covers it.

MS. MCVEY: Your Honor, before he talks about why it's not appropriate, where I think it needs to go is on page seven of your charge.

THE COURT: Okay.

MS. MCVEY: You have proximate cause and then you have the second paragraph on page seven, an intervening force maybe a superseding cause.

THE COURT: Okay.

MR. TIERNEY: What was the first sentence may I ask of that charge.

MS. MCVEY: The negligence of a attending physician is reasonably foreseeable. That's directly from the case.

MR. COLES: That seems, Your Honor, to be the Court commenting on Doctor Billman. That says the negligence of an attending physician is reasonably foreseeable.

THE COURT: The plaintiff is telling me as matter of law, negligence of the second physician is foreseeable.

MS. MCVEY: That's what the case law says.

THE COURT: If that's the case, I think the charge is appropriate. Yes, sir.

MR. TIERNEY: Then we would ask that it be clarified, the negligence of a subsequent.

THE COURT: I agree with you. The language is a little confusing.

MS. MCVEY: And I agree a little bit. That language is directly from the case law and the case law says the law of South Carolina is.

THE COURT: That I think is an important point. If the law is that clear, the jury should not be considering whether or not Doctor Griener's alleged negligence is foreseeable, if as matter of law it is foreseeable.

MR. COLES: And I would suggest, Your Honor -- I'm not familiar with either of this cases, but I suspect these cases deal with an automobile accident. I caused the accident. A person goes to the hospital their back is horribly messed up by a doctor. That's this charge. It would seem to me the negligence of an attending physician.

THE COURT: No, I understand. How is -- but under the law how is that different?

MR. COLES: Because here the jury is absolutely going to think when they hear Your Honor say attending physician.

THE COURT: I'm sorry, now I understand you. Yes, I will absolutely make it clear that we're talking about Doctor Greiner.

MR. TIERNEY: Okay. That will satisfy us.

THE COURT: That's absolutely correct. So let me see, your suggesting, Miss McVey, is on page seven after the intervening force paragraph.

MS. MCVEY: That's right. And Your Honor, I'm sorry. One more thing on that paragraph. We have a foreseeability charge. I will it do all at one time. I think it will be easier.

THE COURT: Okay.

MS. MCVEY: And it's our 17, intervening cause we

are fine with your charge, but there is one sentence we don't believe you added.

MR. TIERNEY: I am just going to look over your shoulder if you don't mind.

THE COURT: The plaintiff proposes that the language be added, however, even if the intervening acts are not foreseeable, the primary wrongdoer is nevertheless liable if his actions alone would have caused the loss of the natural course.

MR. TIERNEY: That language is very prejudicial to say the primary wrongdoer. I mean, basically you're charging the jury that in this case that our client, Doctor Billman, is the primary wrongdoer. I think it's covered basically with what we just went over as far as what they wanted for foreseeability.

THE COURT: Miss McVey, isn't that already covered by the paragraph where we say where several causes have combined to produce an injury a defendant is not relieved from liability because it is responsible for only one of them. Doesn't that cover that?

MS. MCVEY: I don't think so because then you have an intervening charge -- intervening cause charge and that's what they are going to push hard in this case. Their whole case is Greiner could have stopped it.

MR. TIERNEY: It's a little bit more than that.

MS. MCVEY: For purposes of our conversation about this one charge.

MR. TIERNEY: I think that language is highly prejudicial.

MS. MCVEY: It' from the case law, judge. I'm happy to pull the case if that's helpful.

THE COURT: No, I'll take you at your word.

Okay. This is my ruling. I am going to add to page seven, the middle paragraph -- no, not the middle. The second paragraph, which starts with intervening force. I am going to add to that the paragraph the negligence of a later treating physician is foreseeable. Period. Further, if the intervening act is not foreseeable the first wrongdoer is nevertheless still liable if the intervening act is natural and probable consequence of the original actor's conduct.

MS. MCVEY: So just to clarify. You are not adding the entire subsequent physician to this charge?

THE COURT: No.

MS. MCVEY: Because I think that's important. I don't want to argue with the Court's ruling, so please forgive for that. But I just want to make sure because I think that second sentence is important.

THE COURT: For the record, the second sentence

is, if a person uses ordinary care in selecting a physician, the law regards the aggravation of the injury resulting from the negligent act as part of the immediate and direct -- I think that's really confusing.

MR. TIERNEY: I agree. And I respect your prior ruling. Thank you, Your Honor.

THE COURT: Miss McVey, do you want to propose some other --

MS. MCVEY: Can I work on some other language?

THE COURT: Sure.

MS. MCVEY: The concept is important, if that makes sense.

THE COURT: I understand. This language right here to me is incredibly confusing.

MS. MCVEY: Give me just a few minutes.

THE COURT: Sure. Anything else from the plaintiff? Do you need your packet back?

MS. MCVEY: Yes, sir. The only other -- and you kind of addressed this. You have a comparative charge in for the plaintiff. A very comprehensive comparative charge. And then you also added in a duty to mitigate and we believe those are -- your hitting them twice for the same thing, and I don't know in this case what the jury does with the duty to mitigate

MS. MCVEY: I don't believe it applies in this case. I do believe it is a correct statement of law. I don't disagree with that, but what I'm saying is in this case the issue is the comparative negligence.

MR. TIERNEY: It's both, Your Honor. It's clearly both.

THE COURT: I'm going to keep it in. I will do what I proposed. I will move that language into the comparative charge.

MS. MCVEY: I just want to make sure I didn't have any other --

THE COURT: Yes, ma'am.

MS. MCVEY: And Your Honor, you already granted a directed verdict but we of course objected to that finding and would ask you charge recklessness.

THE COURT: Yes, ma'am. You're protected for the record.

MS. MCVEY: Thank you. That's all the issues that we have.

THE COURT: All right. Mr. Tierney. Mr. Coles.

MR. TIERNEY: I think the only issue -- well, two issues. One, is that we had an empty chair charge that we provided. And I'm sorry, I didn't send you numbered ones. I'm kind of scrambling to see where it is.

THE COURT: Do you have a paper copy you can pass up.

MR. TIERNEY: It's here somewhere.

Let me skip to the other one while we're looking for that.

THE COURT: Okay.

MR. TIERNEY: The only other issue we have is with respect to the last paragraph on the jury verdict. Where Your Honor charges there are two possible verdicts which you may you find in this case. We believe that under the apportionment statute that we should be entitled to a charge that says that you can also apportion liability against the third party who is not on the verdict form.

The apportionment statute was part of the 2008 medical malpractice reform act. While there has been some case law I think in 2017, that says you can't put the particular defendant on the verdict form. Which by the way, I will state that prior to those rulings I have tried cases where you're actually allowed to put a third party on the verdict form who was not a named defendant. I understand the ruling of our appellant courts that they define what defendant is, but I still think that a jury can go back under the apportionment statute which allows you to go and argue if there is a

verdict that you should apportion fault among who you think the tortfeasors are. Just because there's not two named tortfeasors and understanding there's the practice and Doctor Billman.

For the purpose of this argument I'm considering them one tortfeasor since the practice is alleged to be responsible for his action. But I think that the jury should be charged that they can -- since we do have an apportionment statute -- consider whether or not Doctor Greiner, or Doctor Renner or Doctor Perlow who are three different actors, three different occurrences, can be considered in an apportionment of fault argument and that they should be charged that they have to consider what their percentages of fault are. And I think the way that this particular paragraph reads that there are two possible verdicts, it negates that statutory provision that there is apportionment now in South Carolina and the jury is allowed to consider that. So I think there needs to be language in there that says that you can also, in addition, there are three possible verdicts or potentially --

THE COURT: I'm inclined to take that whole sentence out. I agree. I drafted that language originally for general session cases and all I'm

trying to say there is, don't infer anything by the fact that guilty comes in front of not guilty before not guilty on the verdict form. I am inclined to say something like -- take out the first sentence entirely and just say there is no significance whatsoever in the order in which possible verdicts are listed. Something like that.

MR. TIERNEY: Thank you.

MS. MCVEY: And that's totally fine. Not to get ahead of the game, but I just want to be clear on what they're arguing. Are you arguing that a third party is suppose to go on the verdict form?

MR. TIERNEY: Oh, I'm definitely going to put that on. Yes, for the record just to -- and as I stated to the Court, I understand the ruling of the Jones case, I think it was.

MS. MCVEY: Smith versus Tiffany. South Carolina Supreme Court case.

MR. TIERNEY: It was 2017 I think, or something like that. And there's a Jones case. And I understand that ruling, but I don't agree with the ruling and I think that the statute was very clear that you can put a third party on there if the evidence is such that there was a third party whose liability had either a hundred percent of the fault or

some other percentage of the fault. And I think we still have apportionment regardless of whether or not you can put the name of the defendant. And I think that if there is a verdict that there can be a separate potion of -- I'll call it a trial so to speak -- on damages where we can argue apportionment to the jury and we be able to argue that in fact Doctor Griener, Doctor Renner, Doctor Perlow because of the evidence from the witness stand should be considered as tortfeasors and that a jury can apportion fault.

THE COURT: Your argument is under the Tiffany case after a verdict is rendered if in fact a verdict is rendered against your client to have an additional proceeding where you would get to argue the jury should apportion some fault to unnamed additional tortfeasors?

MR. TIERNEY: That's my reading of the statute, yes, Your Honor.

MS. MCVEY: I wholeheartedly one thousand percent disagree. And the statute is very clear that apportionment would only happen among remaining defendants in this case. So if there is a verdict against Doctor Billman and their practice and they want to argue apportionment about the practice versus Doctor Billman they can have that.

THE COURT: I understand. You're protected for the record.

MR. TIERNEY: I'm protected for the record.

THE COURT: That is my understanding of the law as well.

MR. TIERNEY: Understood, and I will sit after this. My interpretation of the statute when it first came out and still as it reads today just because they're not on the pleading doesn't mean that we don't have an apportionment statute and the purpose of the apportionment statute is for tortfeasors whether named or not to be considered in the percentage of fault and I think that we should be allowed to pursue that.

Thank you, Your Honor.

THE COURT: All right, and Mr. Tierney did you find that charge?

MR. TIERNEY: No, I'm trying to bring up my computer.

THE COURT: My law clerk thinks she found it.

MR. TIERNEY: Thank you.

THE COURT: This one says, under an empty chair defense the defendants have the right to present evidence and require the fact finder to consider whether -- I mean, this is a correct statement of the law, but it seems an awkward thing to charge the jury.

I telling the jury that you have the right to have them consider Doctor Greiner. It seems a strange thing to charge.

MS. MCVEY: Right.

MR. TIERNEY: It is the law.

THE COURT: I agree.

MR. TIERNEY: And so, therefore, and obviously that has been an argument by Miss McVey several times this morning on her charges, that's the correct statement of law. So that is the law. And I think it clarifies for the jury how they can deliberate with respect to the ample testimony in the record that Doctor Greiner and Doctor Renner and Doctor Perlow deviated from the standard of care. I think it clarifies for them, so when they go back there and deliberate that they understand just because they're not on the verdict form, that they are going to have back there, that they get to consider them just as if they were on that pleading.

Thank you, Your Honor.

MS. MCVEY: Your Honor, just briefly. Of course they have the right to argue the empty chair all day long and they have been doing that very effectively I think.

The way that the jury would deal with empty chair

is that they would find for Doctor Billman, right, if they found that the empty chair was the primary responsibility then Doctor Billman would be absolved because he wouldn't be the proximate cause of the issue. They don't get a charge on the empty chair. That is just kind of like I don't get a charge on civil procedure or my right to argue.

THE COURT: I heard enough on this.

MR. TIERNEY: Can I add one thing just for the record?

THE COURT: Sure.

MR. TIERNEY: I believe that's what I would call -- when Tiffany came out and Jones case that I'm talking about, I think that's what they left available for lack of a better way to say it, is the empty chair argument and because the Court ruled that the defense can still -- we're taking away the right to put what we said you can do in the statute, which is put the names on the verdict form, but you still get to argue the empty chair and I think that is the conduit for why that charge.

THE COURT: I'm going to rule against you Mr. Tierney.

MR. TIERNEY: Thank you, Your Honor.

THE COURT: You are absolutely permitted to make

dental record. Okay.

Doctor have you had a chance to review this record?

A I have.

Q Tell the jury what the issue was that took Tom Lovelace to see Doctor Renner at York dental on April 30th 2015?

A That he had bit his tongue a few weeks prior and it had not been healing yet.

Q Is biting one's tongue considered trauma?

A Yes.

Q We will fast forward a minute. There's been testimony in the record that Tom Lovelace developed a lesion on his tongue near tooth 32 which is in the back right side of his mouth. My question for you would be, can bitting your tongue cause a lesion to appear in the back of your tongue or where that bite occurs?

A Yes.

Q You've reviewed some of the other records are you aware that at some point there was a finding that Mr. Lovelace also had a malpositioned tooth?

A Correct.

Q And would tooth have been tooth number 32?

A That would have been, yes.

Q My question to you is, can a malpositioned tooth such as the one that's been described in Mr. Lovelace, number 32, can that cause one to bit their tongue or be the causal factor for a

lesion such as the one Doctor Renner saw on April 30th of 2015?

A Correct. Yes.

Q Now fast forward a little bit because as I said the jury knows all of these visits so I don't want to spend a lot every time rehashing old ground.

Doctor Renner referred Mr. Lovelace to my client, Doctor Billman, and that visit occurred on May 30, 2015. Have you reviewed that record?

A I have.

Q Can we bring that May 30, 2015 visit up please? Do you have you good view of it doctor?

A Yes, I do.

Q Based on your review of that record, can you tell me what Mr. Lovelace's chief complaint was when he came and saw Doctor Billman on May 13th?

A Bit his tongue two months ago and it's not healing.

Q Does it appear from the record that Doctor Billman did a workup on Mr. Lovelace?

A Yes, he did.

Q And when I say workup, what does that mean to you as a board certified OMS surgeon?

A He took his chief complaint, which was he bit his tongue two months ago. He did a blood pressure on him, a pulse, he did SPO2, which is oxygen saturation rate, took his weight, height, BMI, went through his past medical history. And then it

ulcer patient sitting here, correct?

Q Yes.

A Okay. So, the first thing even before I look at the patient is typically in our practice most patients are referred. And patients can be referred from anywhere. We see patients from dental offices. We see patients from physicians. We see patients from hospitals. Emergency departments. So typically a patient when they come to our office they're going to have a referal slip. Okay. So somebody has written something down on a piece of paper telling them why this patient needs to come see us and I think you all saw the referral slip. I'm sorry. I won't talk about the case. I will just talk about the general.

So we get a referral. So I have an idea of what I am going to be examining that patient for before I even see them. The next step is I review the paperwork that they filled out in the office. I want to reviewed their past medical history. I want to review what they're complaining of. What they write on their sheets. I want to review any medicine that they're taking. What their allergies are. What their risk factors are or their history. And so before I have even seen the patient I look at that. Look at the chart. And then I sit down and examine the patient.

Now, when patients are seated in our office the first part -- and you've seen my form multiple times. So the first part is taking of vital signs. That is done by one of my

assistants or some times the medical students. Got to keep them busy. I'll have them take all those vital signs and that's written down. And then the first thing I do, again, getting back to this differential diagnosis model that has been implied I don't use. So I start to talk to the patient. Okay. Tell me what brings you in to see us. And they will start to tell me what their history is. What's going on. And again, in my mind I am now starting, okay, this is what's going on. I am working through that thought process. And then I review their past medical history with them. I review, even though I have looked at their chart and what they have written. I want to make sure that I talk to them about that. So I talk about that. Make sure the medicine list is accurate. Make sure the allergies are accurate. Make sure everything that's in that document that they filled out is accurate and I write that in that form. Then you saw my examination form and the examinations will vary based on what the patient is there for. So I go through my examination form. And so in this whole process I am working through that differential diagnosis.

So after I examine the patient, take their history, listen to what they're complaining about I come up with a working diagnosis. Now sometimes that diagnose has multiple different things. Sometimes it's one thing that we need to figure out. Make sure it's not this and then we would move to the next thing.

There's been a lot of criticism that that's not written in my chart. Okay. Well, I've been doing this for almost thirty years. I do not write down my differential diagnosis in my records that nobody else is going to see. Now, do I make the medical students write it, absolutely. When I was a medical student -- you heard Doctor Fonseca talk. He spends a lot of time and most of his career in academic institutions. Yes, absolutely, that's how we get medical students and residents to work through that process. They write it down. They write it down. Write it down. But in my chart that only me, my partners or my front staff is going to see for something that's very common I don't necessarily write that down.

Now, if this was a complicated diagnosis where I got to figure out I have no idea right now, then I you got to write all those things down. Okay. Once I come up with a plan I then discuss that plan with the patient. We go over options. Again, I can't force anybody to do anything but I certainly have to give them all their different options for their treatment. And then depending on where the patient is going, if we're going to be doing the procedure or if they're going to be going somewhere else we get the appropriate information.

I'm sorry, I didn't mean to go on and on.

Q Now, what I want you to do is direct your attention to Mr. Lovelace.

A Yes, sir.

But go ahead. You take your time.

A And again, I appreciate your time and your patience. Throughout this. So, there was really two big things that stood out to me when I was evaluating Mr. Lovelace. Okay. The first thing was as I did my examination and I worked through my plan and my treatment options, which you all have heard. I gave him two treatment options; extraction or recontouring the tooth. Well, most people with a wisdom tooth that's out of position are going to say extraction. Okay. Well, Mr. Lovelace didn't want extraction. He wanted to recontour. Okay. So that was kind of in my brain. That was a little bit different then what most people are going to go through with. They are just going to go ahead and get the tooth out.

The second thing that really kind of jogged my memory, because again, when I saw him almost a year and a half later then, boom, it's right back. I remember that visit. The second thing that I recall sort of imprinted it in my mind, if you may say, is that we've all seen the letter that I wrote to Doctor Renner. And I think Doctor Fonseca also showed a letter from Doctor Simpson and you saw how neat and nice his was. It was all typed up and everything and you saw how mine was written. In our practice when we send letters to referrals wherever it may be. There are two ways we can do it. The one way if we have some time I actually have a digital recorder with me that I take to the different offices and I'll digitally dictate a

Q Because you were not able what did you do then?

A I told Mr. Lovelace that we're going get you back to your general dentist and to facilitate that so that it can be done as soon as possible I am going to write a letter that is sent in the mail today and then once the tooth is smoothed I want to see you back in one to two weeks to make sure it heals. I discussed with Mr. Lovelace that this area needs to heal because if it doesn't heal by doing the first step in this treatment then we need to do something further.

Q Doctor Billman, did you tell your patient this is horrible. You have cancer?

A Absolutely not.

Q Did you mention cancer to Mr. Lovelace?

A Absolutely.

Q Tell the jury in what context you mentioned cancer to Mr. Lovelace on May 13, 2015.

A Absolutely. So one hundred percent of the patients that we see that are referred to our office for lesions are concerned about cancer. One hundred percent of the time they are concerned about cancer. So every one of these patients cancer is discussed. It has to be. That's what they are concerned about. So what I say, after I examine them. Work through my differential diagnosis. We have an ulcer. Most likely it's a traumatic ulcer but it still could be a cancer. So I tell them cancer anywhere in the body it's normal cells

that for some reason or other just start growing haywire. Now we know in the mouth that any ulceration can become an oral cancer. However, in Mr. Lovelace's case, we have a clear source of this irritation. So before we do a biopsy or any further treatment, let's first try to get rid of this source of irritation and then if it doesn't heal I want you to come back in one to two weeks and we will consider biopsy or removal of a tooth.

Q Now, Doctor Billman, you were present when Mr. Lovelace testified. Do you recall when he said that when he first went to see you on May 13th, his blood pressure felt really high and he said he was very concerned about what you were going to tell him. Do you recall Mr. Lovelace -- actually, do you remember Mr. Lovelace saying that?

A I do not remember that part.

Q Do you remember him saying that in Court?

A Yes, sir, in the testimony. Yes, sir.

Q And is that a common trait or experience when patients show up and they want to talk to you about a lesion on the tongue?

A Absolutely. Unfortunately, we're not the most popular place for people to visit. So most people are pretty nervous about anything. But certainly the oral lesion patients are typically the most nervous to come and see us.

Q And to get to the bottom, you wrote a letter to Doctor

Q Okay. And understand your position is contrary?
A I do.
Q So that by its nature is going to form a conflict?
A Yes, sir.
Q All right. You have a successful busy practice?
A Yes, sir.
Q You told me in 2019 you saw forty seven hundred new patients?
A That's probably about right sir.
Q That's split between four doctors?
A Four ways, yes.
Q So your seeing over one thousand new patients a year?
A I would have to look at the numbers, but that's probably around right. I haven't looked at them recently. Certainly Covid has changed things a little.
Q But in 2016,'17,'18,'19, up to 2020, you were seeing personally a thousand new patients every year and your practice was seeing around four seven hundred new patients?
A Yes, sir.
Q And you told me that as a busy doctor you do -- you see 15 to 25 patients a day?
A A that time that's probably appropriate with emergencies. We have had to change the schedule again because our longer cleaning times between rooms and less people in the waiting room now.

MS. MCVEY: Yes.

THE COURT: Okay. Any objection from the plaintiff as to charge or the verdict form?

MS MCVEY: Other than what we put on the record yesterday, no, sir.

THE COURT: From the defense?

MR. TIERNEY: No, exceptions -- no objections to the verdict form. I don't think I made any objections to the charge yesterday with the exception of paragraph -- just to be brief, Your Honor.

THE COURT: Yes, sir.

MR. TIERNEY: On page seven, paragraph number two, it starts with intervening force.

THE COURT: Okay.

MR. TIERNEY: Which is under the proximate cause header on the prior page.

THE COURT: Correct.

MR. TIERNEY: I believe there's a sentence, it's the second sentence in other words, the intervening negligence of the third party will not excuse the first wrongdoer.

THE COURT: Correct.

MR. TIERNEY: If such intervention ought to be foreseen in the exercise of due care. The negligence of a later treating doctor is foreseeable. We take

exception to that charge. That portion of the charge, the negligence of the later treating doctors is foreseeable.

THE COURT: We talked about that yesterday. You are protected for the record.

MR. TIERNEY: Thank you, Your Honor.

THE COURT: All right. Ready to roll, from the plaintiff?

MS MCVEY: Yes.

THE COURT: From the defense?

MR. TIERNEY: Yes.

THE COURT: Counsel, let me commend you again for getting a very complicated case tried in four days. So thank you.

MR. TIERNEY: Thank you, Your Honor.

THE COURT: Let's bring them in.

MR. KASSEL: And if Your Honor please on the verdict form --

THE COURT: Yes.

MR. KASSEL: -- it says on number three, if you answer no to question two skip question three and four and then there's no further direction to go to number five.

THE COURT: Okay. Let me think. That's a good point. Skip question three and four and proceed to

question five.

Let me go and get that done.

(WHEREUPON, the judge leaves the courtroom.)

THE COURT: Counsel, if you all want to approach one more time. The only thing I changed on the verdict form is question three, the first sentence. Now it says if you answer no to question two skip question three and four and proceed to question five.

MR. TIERNEY: No objection by the defense.

THE COURT: Thank you. And I appreciate you all being patient running become and forth. I wish there is a way for me to print from the courtroom but unfortunately there is not.

All right, let's bring them in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right. Ladies and gentlemen, welcome back this morning. I thank you for your patience. We worked through a few final legal issues in the case.

Was everyone still able to follow the rules I'd given you?

(Whereupon, jurors nod affirmatively.)

THE COURT: Thank you very much.

Ladies and gentlemen, I'm about to give you my charge in this case which is my explanation of the law

to you. If any of you have ever taken a public speaking class in school your teacher probably said when you're talking to people don't read from something. Make eye contact.

I will have to break that rule today because the charge is somewhat lengthy and I have to make sure that I don't ad lib or make mistakes and so a lot of time I will be reading so I apologize for this in advance.

Madam Foreperson and member of the jury, you have heard the evidence in this case and you are about to hear the arguments of both parties. I will now explain to you the rules of law you must follow and apply in deciding this case. When I have finished you will hear the closing arguments of the parties before you go to the jury room and begin your discussions, which are sometimes called deliberations. Your decision must be based solely on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

I will give you a copy of these instructions in written form, what I am reading now I will give to you in writing to take back with you in the jury room. During your deliberations you may refer to these instructions to guide your decision-making. You must

follow the law as I explain it even if you do not agree with it. You must consider my instructions as a whole and not follow some and ignore others.

I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the evidence before you. If there was any testimony I ordered stricken from the record in the case during this trial you should disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record, and any stipulations or agreements of the attorneys.

I have the additional duty to charge you on the law applicable to this case which is what I'm doing now. As the presiding judge I am sole judge of the law of this case, and it's your duty as jurors to accept the law as I now explain it to you. If you already have any idea as to what you think the law is, or what you think the law ought to be and it does not agree with what I am now telling you, you must abandon your idea because you are sworn as jurors to accept

the law and apply it exactly as I've explain it to you.

In every case tried in this court before a jury, you the jury are the soul and exclusive judge of the facts in this case. As a trial judge I can't intimate, confer or state, comment on, reply or make any statement to a jury about the facts in the case since you, the jury, are the sole judge of the facts. You should not infer from what I have said during the trial in ruling on issues of law or anything else or anything I am now explaining to you that I have an opinion about the facts in this case. The law does not allow me to have an opinion about the facts in the case. The matter is solely for you, the jury to decide. As the jurors it is your duty to determine. As jurors, it is your duty to determine the effect, the value, the weight and truth of the evidence that was presented.

In this case the plaintiff, Mr. Lovelace, has the ability to prove every essential part of his claim by a "preponderance of the evidence." This is sometimes called the burden of proof or the "burden of persuasion." A "preponderance of the evidence" means the amount of evidence which is enough to persuade you that a claim or contention is more likely true then

not true such as by the greater weight of the evidence.

In deciding whether any fact has been proved by a preponderance of the evidence you may consider the witnesses' testimony, regardless of who called them to the stand and all the exhibits received in evidence regardless of who produced them or entered them. If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the party making the claim or contention.

As I have said before, you must consider only the evidence I've admitted into court. Evidence includes both the testimony of witnesses and the exhibits that have been admitted. But remember, anything the lawyers say is not evidence and is not binding on you.

Once again, you should not assume from anything I've said that I have any opinion about the facts in this case. In fact, accept for my instructions on the law that I am giving you right now, you should disregard everything I have said in this case and you make your own decision about facts. Your own recollection and interpretation of the evidence is what matters in considering the evidence you should use your reason and common sense to make deductions

and reach conclusions.

There are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is a testimony of a person who claims to have actual knowledge of a fact, like an eye-witness. This evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts or circumstances which indicate the existence of another fact. It is evidence which establishes collateral facts in which the main fact could be inferred. Circumstantial is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence then a direct evidence. You should weigh all of the evidence in the case.

You may consider evidence of the habits of a person. Evidence of the habits of a person whether corroborated or not, and regardless of eyewitness is relevant to prove the conduct of a person on a particular occasion was in conformity of their habit.

To put it another way, evidence that a person has a habit of doing something can be considered when you are determining whether that person did the thing as usual on this particular occasion. The conduct to be considered a habit must be specific and particular so that it's capable of almost identical repetition.

Ladies and gentlemen, redactions. During the presentation of the case you may have noticed that occasionally parts of the audio or video or documents that were presented have been redacted or edited out. This is due to the rules of court and was a decision made by me. Please do not speculate as to what may or may not have been contained in these portions of documents or videos and you are not to hold those portions against either party.

Expert witnesses. The rules of evidence ordinarily do not permit witnesses that testify to opinions or conclusions. Normally, a witness can only say what they saw or heard themselves. An exception to this rule exists for witnesses we call "expert witnesses." This is a witness who by education or experience has become an expert in an art or science or profession or calling and they may state their opinion as to relevant and material matters in which they're an expert and may also give the reasons for

their opinion.

You should consider any expert opinions in this case and, like any other evidence, you should give it the weight you think it deserves. If you decide an expert's opinion is not based on enough education and experience, or if you conclude the reasons given in support of their opinion are not sound, or if you conclude their opinion is outweighed by other evidence, you may disregard the expert's opinion entirely.

An expert witness' testimony is not to be given any greater weight than that of other witnesses simply because they are an expert. Further, as juror, you are not required to accept an expert's opinion even if it is not contradicted.

In this case, there has been a conflict in the testimony of various expert witnesses. To that end, you must weigh one expert's opinion against another, and you must consider the reason given by one expert as compared to the other. You should consider the relative credibility and knowledge of the expert who have testified. You should find in favor of the expert testimony which, in your opinion, is entitled to the greater weight.

Believability or credibility of witnesses. When I

say that you must consider all the evidence, I do not mean that you must accept it all as true or accurate. You should decide whether you believe what each witness had to say, and how important their testimony was. In making that decision, you may believe or disbelieve any witness in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

In deciding whether to believe a witness, I suggest that you ask yourself a few questions. Did the witness impress you as one who was telling the truth? Did the witness have any particular reason to not tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and the ability to accurately observe the things that he was testifying about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other evidence?

Please keep in mind though that a simple mistake by a witness doesn't mean they weren't telling the truth as they remember it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide

whether it was because of innocent lapse in memory or an intentional deception. The significance of your decision could depend on whether a misstatement is about an important fact or unimportant detail.

In this case the plaintiff claims the defendant committed medical practice. Medical malpractice is a form of carelessness or negligence. In order to recover, the plaintiff must establish four things by a preponderance of the evidence. One, the standard of care. Number two, a breach of that standard of care. Three, which proximately caused. Four, damages to the plaintiff. Later in this instruction, I will explain each of these elements more fully.

The plaintiff must prove the standard of care the defendant owed in treating the plaintiff. When a doctor treats a patient, the law does not require the doctor to be perfect or infallible. The law does require that the doctor use the knowledge, care and skill ordinarily possessed and used by doctors in good standing in the field of medicine under the same or similar circumstances. The law also requires that the doctor follow the generally accepted practices and procedures in their profession and not cause unnecessary harm. A doctor who holds himself out as a specialist is required to use a degree of learning and

skill ordinarily possessed by a specialist of good standing in that field.

Next up, breach of the standard of care. The plaintiff must prove the defendant negligently departed from the standard of care in treating the plaintiff. Negligence is the failure to do what an ordinarily, careful, and prudent doctor in their field of medicine would have done under the same or similar circumstances, or doing something that an ordinary, careful and prudent doctor would not have done under the same or similar circumstances.

The mere fact that a treatment or action by the doctor does not benefit the patient, or even harms the patient, is not in of itself proof of negligence. A bad result, an injury, a death, a failure to care or incorrect diagnosis is not enough, alone, to show the defendant was negligent. Further, the fact that another medical professional would have used a different treatment does not amount to malpractice. In considering whether the defendant made a reasonable decision, you must consider the decision in relation to the facts as they existed at the time, and not in the light of what hindsight may reveal. Finally, a doctor's breach of the standard of care must be established by expert testimony, unless the situation

is one in which common knowledge is enough to infer negligence from those facts.

The third element of a negligence claim or malpractice is proximate cause. The defendant's negligence must have proximately caused the injuries to the plaintiff. The law defines the proximate cause of an injury to be something that produces a natural chain of events which in the end brings about the injury. In other words, proximate cause is a direct cause, without which the injury would not have happened.

To prove the defendant's negligent proximately caused the plaintiff's injuries, the plaintiff must first prove causation in fact. This is proven by showing the injuries would not have occurred accept for the defendant's negligence.

The plaintiff must also prove legal cause. Legal cause is proven by showing that the injuries were foreseeable. That means the injuries occurred as a natural and probably consequence of the defendant's negligence. The plaintiff must prove that some injury from the defendant's negligence was foreseeable, but does not have to prove that the particular injury was foreseeable. However, the defendant cannot be held responsible for things which could not have been

expected to happen.

Proximate cause -- ladies and gentleman I know that this is lengthy. We are about halfway there. Stay with me. I know that when your not a lawyer having a judge explain the law to you going on it can be tough to follow. Try to stay with me. We're halfway done and you will have a copy of these in the jury room to refer to. So you don't have to memorize what I am telling you.

Proximate cause does not case mean the only cause. Where several causes have combined to create an injury, a defendant is not relieved from liability because he or she is responsible for only one of them. Where a plaintiff is injured by the wrongful conduct of two or more actors the plaintiff has the option to sue each one separately or join them as parties in a single case. The plaintiff has the choice of designating the party who he claims committed the wrongful act that's been alleged. Simply put, the defendant's act can be a proximate cause of the plaintiff's injuries if they are at least one of the direct concurring causes of the injury.

An intervening force may be a superseding cause that relieves an actor from liability. However, to get relief from liability, the intervening cause must

be one that could not have been reasonably foreseen or anticipated. In other words, the intervening negligence of a third party person will not excuse the first wrongdoer if such intervention ought to have been foreseen in the exercise of due care. The negligence of a later treating doctor is foreseeable. Further, even if an intervening act is not foreseeable, the first wrongdoer is nevertheless still liable if the intervening act is a natural and probable consequence of the original actor's conduct.

You may not award damages for any injury or condition which the plaintiff may have suffered, or now be suffering, unless it has been established by the greater weight of the evidence that such an injury or condition was proximately caused by the accident or incident in question. When the opinions of medical experts are relied upon to establish a causal connection, the expert must, with a reasonable degree of certainty, state that in his professional opinion the injuries complained of most probably resulted from the negligence.

Comparative Negligence. The defendant in this case says the plaintiff's own negligence proximately caused the plaintiff's injuries. If you find the defendant was negligent you must then decide whether the

plaintiff was negligent also. The defendant must prove by a preponderance, or greater weight, of the evidence the plaintiff breached a duty of care which proximately caused their own injury. The same law which I have told you to use in deciding whether the defendant was negligent should be used in deciding whether the plaintiff was negligent.

If you find the negligence of both the plaintiff and the defendant proximately caused the plaintiff's injuries, you must decide how much of the negligence of the plaintiff contributed to his or her injuries, and how much the defendant's negligence contributed to the plaintiff's injuries. In determining the percentage of fault ir negligence between the plaintiff and the defendant you may consider, among other things, the following factors:

(1) Whether each party's conduct was only inadvertent or whether it was engaged in with an awareness of the danger involved.

(2) The magnitude of the risk created by each party's conduct, including the number of people endangered and the possible severity of the of injury.

(3) The significance of the goal that each party was trying to reach and the need to achieve the goal in that manner.

(4) Each parties capabilities and abilities to realize and eliminate the risk.

(5) The circumstances confronting each party at the time the conduct occurred, such as the existence of an emergency requiring a quick decision.

(6) The relative closeness of the causal relationship of the negligent conduct of the defendant and the harm to the plaintiff; and.

(7) Whether either parties' conduct involved a violation of a safety statute or regulation.

When a plaintiff is injured or damaged by the wrongful act of another person, it is the duty of the plaintiff to try to reasonably avoid or lessen these damages. Those damages which may be avoided by the use of reasonable efforts, care, and prudence by the plaintiff cannot be the proximate result of the defendant's wrongful act. Therefore, the plaintiff cannot recover for damages which reasonably might have been avoided.

The efforts required by the plaintiff must be determined by the rules of common sense and fair dealing and what a person or ordinary reason and prudence would do under the same circumstance.

The plaintiff is not required to use unreasonable efforts or great expense to avoid or lessen the

damages. The defendant has the burden of proving a failure to lessen damages on the part of the plaintiff by preponderance, or greater weight, of the evidence.

I will give you written questions on a verdict form for you to reach your verdict. The form will have spaces for you to write your decisions about the percentage of negligence, if any, of both parties which proximately caused the plaintiff's injuries.

The first question on the verdict form -- and the verdict form is like this. The verdict form, the first question asked you to decide whether the defendant was negligent and, if so, whether that was the proximate cause of the plaintiff's injuries. Question two asks the same thing about any negligence by the plaintiff. Question three asks you to decide the percentage of each party's negligence which proximately caused the injuries. These percentages must add to one hundred. Question four asks if plaintiff Thomas Lovelace's negligence, if any, was more than fifty percent. Question five asks you to determine the total amount of damages suffered by the plaintiffs.

Do not reduce -- do not reduce the plaintiff's total damages based on any percentages of negligence by any party. After you have answered the questions

on the verdict form, I will compute the amount of damages for which the defendant is responsible based on the percentages which you have decided. You should compute only the total amount of plaintiff's damages and enter that figure on the verdict form.

Actual damages. The plaintiff must prove the expenses he claims he occurred as a result of the injuries are necessary and reasonable. Actual damages which are called compensatory -- also called compensatory damages, are designed to make the injured party whole. This means the damages are an attempt to put the injured party in the same position he was in prior to the accident to the extent this is monetarily possible. Actual damage include compensation for all injuries that are the proximate result of the wrongful conduct of the defendant.

The existence, the causation, or the amount of damages cannot be left for conjecture, guess or speculation. However, the law does not require proof of the amount of damage to absolute or mathematical certainty. It is sufficient that damages be proved to a reasonable degree of certainty. The evidence presented by the plaintiff must enable you, the jury, to determine what amount is fair, just and reasonable. The plaintiff bears the burden of proving by the

preponderance of the evidence that he is entitled to compensatory damages.

I'm about three quarters of the way there.

Actual damages - elements. In determining the amount of compensation for injuries suffered by the plaintiff as a result of the defendant's actions, it is proper for you to consider and award past and present damages for;

(1)Out-of-pocket expenses;.

(2) Medical expenses, including physicians, hospital, medicine, physical therapy, rehabilitation and transportation expenses connected with medical treatment;

(3) Psychological trauma;

(4) Mental anguish;

(5) Psychological injury;

(6) Depression:

(7) Pain and suffering; and,

(8) Loss of enjoyment of life.

The plaintiff bears the burden of proving these elements by a preponderance of the evidence.

Medical bills. In medical malpractice actions, the general rule is that the plaintiff may recover for the necessary and reasonable expenses caused by the injury, such as amounts incurred for medicine, medical

services, hospital expenses, and nursing. A person who suffers a personal injury because of the negligence of another person is entitled to recover the reasonable value of the medical care and expenses they incurred for the treatment of injuries up to the time of trial. Accordingly, the plaintiff may recover amounts incurred for past medical and other out-of-pocket and anticipated expenses such as vocational, physical and other rehabilitation efforts. Recovery for medical expenses is controlled by what the services were reasonably worth and not by what was actually paid or contracted to pay.

If you determine from the evidence and under the law as I have instructed you that the plaintiff is entitled to recover damages, including medical or health care costs, then the plaintiff can only recover the amounts that you determine from the evidence to be reasonable and necessary. While the amount actually charged and incurred can be considered by you, you are not bound by that amount. You must find only the sum that is reasonable and necessary.

Prospective damages. A plaintiff is never entitled to recover conjectural or speculative damages. However, if you find the plaintiff is entitled to a verdict for actual damages, your verdict

should include an amount to cover any past, present and future damages which were proximately caused by the defendant. Any future damages must be reasonably certain to occur in the future as a result of the defendant's act. Prospective damages need not be proven to a mathematical certainty or be based on the evidence of the precise amount of damages that the plaintiff has suffered. Instead, the evidence must allow you to determine what amount of damages is fair, just and reasonable.

Pain and suffering. Pain and suffering is a material element of damages upon which recovery can be based. The plaintiff is entitled to compensation for pain and suffering which he proves directly results from the wrongful acts of the defendant.

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury. In making an estimate of the damages for pain and suffering, you should consider how bad the injuries were, whether they caused the plaintiff to suffer, how long the pain and suffering lasted or is expected to last. You should also consider the plaintiff's age, health, habits, and condition before the injury compared to his condition after.

Pain and suffering have no market price. Pain and suffering is not capable of exact measurement, nor is there a fixed rule or standard by which it can be measured. The amount of damages to be awarded for pain and suffering, if any, must be left to the judgement of you the jury. You should use a calm and reasonable judgement to ensure that the damages are just and reasonable in light of the testimony and evidence.

Loss of enjoyment of life. Loss of enjoyment of life resulting from a personal injury, is a proper element of damages. Damages for loss of enjoyment of life compensate for the limitations resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of their daily life or, from the individual's inability to pursue his talents, interest, or hobbies.

Mental suffering. Mental suffering, apprehension, shock, fight, emotional upset, humiliation, and anxiety, either present or in the future -- expected in the future, can be properly considered as an element of damages. The amount of damages for mental suffering can not be exactly measured.

If you find the plaintiff is permanently injured as

a result of the defendant's actions, you must decide how, if at all, the injury will effect the rest of the person's -- the plaintiff's life. A person's life expectancy in South Carolina is determined by a life expectancy table which is part of the laws of our state. The life expectancy table is only an estimate of the probable average remaining length of the life of all persons in our state of a certain age. I charge you that the plaintiff is currently 66 years old and according to the legal life expectancy table, he has a life expectancy of 16.08 years from now. This fact is to be considered by you along with any other facts and circumstances in evidence bearing on the plaintiff's life expectancy, including his occupation, his habits, his health at the time of the injury in deciding the amount of damages to be awarded.

The second plaintiff, Carol Lovelace, also claims loss of consortium because of the injuries received by her husband, Tom Lovelace. To award damages for loss of consortium, you must find the defendant's conduct was wrongful, and as a result, Carol Lovelace herself suffered a loss. Further, the burden is on the plaintiff to prove these damages by the preponderance of the evidence, and the instructions that I have

previously given you on actual damages also apply to a claim for loss of consortium.

Loss of consortium includes the services provided by one spouse to another, including love, companionship, affection, society, sexual relations, comfort, solace and guidance. The plaintiff is entitled to recover the value of those services of her spouse which were lost, including the loss of her spouse's society and companionship in her home and for any expenses for the care and treatment of her spouse. This loss of consortium cannot be weighed or measured. You are to determine its value by applying your knowledge to the facts and circumstance of this case.

Madam foreperson and ladies and gentlemen of the jury, I wish to express the hope and confidence that each of you will be mindful of the importance of your responsibility. You're not called upon to serve as jurors very often, and the proper performance of your duty requires each of you to reach the height of freeing your mind of all improper influences.

As the presiding officer of this court, I am vitally concerned that whatever verdict you find will be the result of your going into the jury room and confining your consideration to the evidence and the law that you have heard in court, weighing fairly and

impartially, and I have every confidence that you will do that.

Your verdict in this case cannot be based on sympathy, or compassion, or prejudice or emotion or some other consideration not found. Remember, your verdict must be unanimous.

Ladies and gentlemen, this is verdict form, which I hand back. Once you begin deliberation after you reached your verdict it's unanimous the foreperson will fill out the verdict form and sign it and let the bailiff know and then we will bring you back into Court. There's no significance of the order in which I list the possible verdicts on the form. It is simply that one must be stated first. All 12 of you must agree on the verdict. Your verdict cannot be based on sympathy, or passion, or prejudice, or emotion, or any other consideration not in evidence.

Madam foreperson, when the jury agrees on the verdict, you will sign your name as foreperson underneath the jury verdict, knock on the door and inform the bailiff. We will bring you back into the courtroom.

Ladies and gentlemen, what we are about to do is closing arguments from the lawyers. Once you hear the closing arguments I will send you back to the jury

room and don't start deliberating quite yet. The very final step is, the attorneys have to look though all the evidence that's going to be sent back to you and make sure everything is in order and nothing is missing. So the bailiff will then bring you all the evidence, they will bring you a copy of the jury instructions I just read to you and they will bring you a copy of the verdict form. When the bailiff brings you those things that is your signal to begin deliberation.

You don't get a lot of monetary in South Carolina, but we will pay for lunch today. So York County is going to order pizza for everyone so you don't need to worry about lunch.

Now, I am going to give the attorneys an opportunity to object to anything I've just said and then we will move on to arguments. Any objections from the plaintiff?

MS. MCVEY: No, Your Honor.

THE COURT: From the defense?

MR. KASSEL: Just renewing that one prior objection, Your Honor.

THE COURT: Yes, sir.

All right. Ladies and gentlemen, that is my explanation of the law. I am now going to ask you to

Doctor Renner sent Tom to you, Doctor Billman because Doctor Renner is a general dentist. He's worried. He's thinking about a biopsy for cancer. He wants you to figure this out because that's what you do. You're an oral surgeon. That was his job. That is his specialty. Doctor Billman is the only one between him and Doctor Renner who can biopsy. He's trained to do the biopsies, and that's why he was sent.

So what is the standard of care for diagnosing a lesion like Tom had on his tongue? Well, we had heard from Doctor Spalla from Philadelphia, the ear nose and throat surgeon and we heard from Doctor Fonseca from Asheville, the oral surgeon telling you what the standard of care is. Figure out a differential diagnosis. A list of possible causes. So important. And it's not -- this differential diagnosis is not just something that oral surgeons do. Every medical professional does, and Doctor Billman told us auto mechanics do it. All kinds of folks use a differential diagnosis. It's real important. It's not just in this courtroom that it's being talked about. Consider a differential diagnosis and if you consider a differential diagnosis, oral lesion on the tongue you have to consider the possibility of carcer.

then maybe very importantly you know what, Doctor Billman, you have to make a return appointment for Tom.

You heard Doctor Spalla routinely we make a return appointment in four weeks. It gives you time to go to Doctor Renner and get the tooth fixed. Get it smoothed and then come back with one or two weeks of healing. That would put Tom back in Doctor Billman's office by June. And have you to document your chart Doctor Billman. You have to document your chart. That's what the standard of care requires and the reason you document your chart is not just to have a nice pristine chart that nobody sees. This chart is like a checklist when you document it. You document what you did so you know that you did it. You talk to a patient about cancer you document that. And when someone looks at that record, when his partner looks at that record, Doctor Simpson looked at that record a year later he can say here's what happened. Documenting is important for patient care and patient safety.

Well, did Doctor Billman do what a reasonable prudent oral surgeon would have done? Did he comply with the standard of care? Did you see evidence in this case that he considered a differential diagnosis

that included cancer and formulated a plan to rule it out? How do you answer that question? I mean this event happened some six years ago at this point. Almost six years ago. You have to look at the medical records. You have to go back to the medical records. They are important documents that were made at the time of the events by the person with knowledge. By Doctor Billman, whose very purpose, the medical chart, is to document what happened. Doctor Billman is a busy oral surgeon. He said thirty patients a day, four days a week, forty-eight weeks a year for the last five years. Since Tom was in his office the first time in April of 2015 he has had over 25,000 patient visits. A lot of visits. How do you keep them all straight? Each patient is an individual. Each patient is unique. Each patient deserves a documented record and follow-up plan.

Did Doctor Billman comply with this standard of care? Well, did he consider cancer in his differential? So let's look. When you look at the medical record that he made at the time and you see this document, there's nothing in the note. There's nothing in the note about a differential. There's nothing in the note about any consideration of cancer. There's nothing in the note about any description of a

consideration with Tom. There's nothing in the note about returning. There's no return appointment. He's not thinking about cancer. He's saying definitively it's trama from the tooth. He is not making a plan to look for cancer because he's not thinking about cancer. Same with his letter to Doctor Renner. There's nothing in the letter about cancer. There's nothing in the letter about returning Tom to Doctor Billman to reevaluate a lesion once a tooth is fixed. There's nothing there.

Wow, you know, this is Doctor Lecholop. He came and he was asked a question. What I'm asking you is, did he, did Doctor Billman have an obligation to mention the possibility of cancer to Mr. Lovelace? Answer. I don't think he thought it was cancer that's why he didn't mention it. It's extraordinary.

When you go back in your jury room somebody is going to say, you think Doctor Billman told Tom about cancer? Will one of you asked the question. Make the statement. You know, they hired an expert from MUSC who came up and told us he didn't. He didn't mention it. Their own expert said Doctor Billman didn't mention cancer. Look what's going on here. I'm going to take Doctor Lecholop's deposition. I am going to be asking him questions. Doctor Lecholop knows the

biggest question in the case is whether Doctor Billman told Tom about cancer. How does he prepare for that deposition? What does he look at to get the answer to that question he knows is coming. Doctor Billman didn't tell Tom about cancer. He's negligent. Where does Doctor Lecholop look to get the answer? He goes to where doctors always go to find out what happened in the case. He goes to the most important source. He goes to the primary source. He goes to the source that was made at the time. He goes to where he was trained to look for an answer. He goes to the medical records. He goes to the medical records that Doctor Billman made. The document made at the time. The document, whose very purpose is to say what happened. He goes to the chart and the chart says trauma. It's silent about any thought of cancer and so he says I don't think he thought it was cancer. That's why he didn't mention it. He went to where he was trained to go to get the answer and he got the answer because he knows that doctors document those kind of things in the medical chart.

When I asked him the question, did you have an obligation to mention the possibility of cancer he answered that question. He answered it. He didn't say to me, you know, let me see what Doctor Billman

said in his deposition before I answer that question. Let me see what he wrote in the deposition that was done five years after the fact. He didn't say that. He answered the question because he looked at the records and that's where he wanted to find the answer and he knew the answer would be. And then this highly trained oral surgeon from MUSC has now created a problem for my friends on defense. He's saying Doctor Billman didn't say cancer, so what now has to happen. They took Doctor Lecholop's highly trained oral surgeon who teaches residents at MUSC had him coming into this courtroom and say, tell this jury you made a mistake. You made a mistake. You fess up. You tell them that. You looked instead of at the medical record that you were trained to look at you relied on this deposition five years later. That's what you should have looked at. Tell them now that you looked at the deposition. If that makes any sense that's for you folks to figure out.

Doctor Lecholop told us what was apparent in the record and if there had been a discussion about consider it would have been in the record. Cancer was not in Doctor Billman's differential diagnosis and as a result he breached the standard of care. Well, did he formulate a plan to rule out cancer? If you're not

looking for it you can't find it. You're not going to have a plan to rule it out. He formulated a plan to fix a tooth. He didn't formulate a plan to look for cancer. He tells Tom to get the tooth fixed. He doesn't tell him to get it fixed urgently. That's really important. He doesn't tell Tom the reason about getting the tooth fixed. That really the reason is not just so it's not rubbing tongue so that once the offending tooth is removed or smoothed I want to see if the lesion is still there. He didn't say that to Tom. It's not in the records. He didn't tell Tom to return in one to two weeks. It's not in the records. He didn't make any kind of return appointment. He didn't tell Renner to fix the tooth urgently. He told him to fix the tooth but not urgently, and he said nothing to Renner about returning Tom. So important. And Doctor Renner testified that based on his prior dealings with Doctor Billman, if Doctor Billman wanted him to return, if Doctor Billman wanted Tom to return, to send a patient back he would have said so in his record. He would have told Doctor Renner please send this man back. He didn't do that. And finally, Doctor Billman, made no return appointment for Tom some four weeks out.

Doctor Spalla says routinely we do it four weeks

out. Gives you time to get the tooth fixed. Give you time for healing. I want him back in the office. Doctor Billman made no return appointment in his office. He could have done that. Takes nothing. Even Doctor Lecholop admitted to us on the stand, that's good practice. That's -- I would have done that, Doctor Lecholop tells us. That's good patient care. A return appointment, my goodness, that's not a heavy lift. Doctor Billman didn't do it. And he didn't document in his chart. Doctor Billman didn't document in his chart these things that he should have done. There's nothing there. You know, a document is a checklist to make sure that you've done something that you said that you are going to do. A doctor wouldn't write down I discussed cancer with a patient unless he actually did it. You know, when you look at there is some documentation in this record. This is Doctor Simpson's note from August of 16th when Tom comes in for the biopsy a year later. Consent signed for the biopsy. Boy, they document the heck out of that and they should. Consent signed to have a biopsy done. Check. Yes. And then they go through a whole list of what all the risks are and they make Tom -- you will see it. It's in the exhibit. Every risk -- I don't know, there're 10 or 15 of them. He has to

initial every one. Not only do they want to tell him, but they want Tom to initial it to make sure that there's no question about what was told to Tom about the consent. About the risks. That's what Doctor Simpson did. That's protects. That protects the practice if some patient comes up, you never told me. That kind of documentation protects the practice. RBA, discussed and understood. Risks, benefit, alternatives.

Doctor Simpson documented that. They say that every time. Over and over again. Risks, benefit, alternatives. It doesn't matter how many times you say it. They still document that. Doctor Simpson documented that. And then look what he did down here, post-op instructions reviewed with patient. Check. I did that. I reviewed the instructions to come back. I know I did it because I checked it. And then underneath, follow up, one week. Doctor Simpson made him, made Tom a follow-up appointment, one week. This is August 19th. Follow up, one week. Tom was back in that office August 25th. He was told to come back.

There is no documentation of a discussion by Doctor Billman about cancer, about the need to return, about the need to re-evaluate after the tooth is fixed, about a return appointment. Documentation of those

Doctor Billman sent Mr. Lovelace away from the office on May 13th, Mr. Lovelace told you I knew the plan. My tooth needed to be smoothed and approximate if that didn't work it needed to be extracted. I knew that. And every single doctor who has testified has said, if that plan was followed the cancer doesn't happen.

I ask you to consider Doctor Greiner in November of 2015. This is huge. On November 11th Doctor Greiner sees Mr. Lovelace. Everybody agrees. You've seen the records. I'm not going to put it up. On November 18th, Doctor Greiner smooths the tooth. Doctor Greiner tells his partner, Doctor Renner, it looked ugly. It looked angry. You heard Doctor Renner say that. He said, yeah, my partner told me that. Remember Doctor Renner -- I've never met the man until he came into court, but he seems like a wonderful dentist. He seems like a candid, honest man to me. Did you see how comfortable he was? But he answered the question truthfully, I think, when he was asked, did your partner Doctor Greiner do the right thing if he did not tell Mr. Lovelace to return and Doctor Renner said no. No. In fact, can we please, can we put that up? If not I can skip over. I'm surprising everyone over there. Can we get that please. I am going to do this two or three times.

This is the second time.

This is Doctor Renner's testimony that he was shown when he was on the stand. And he was asked, this is with regard -- now remember, Doctor Renner did not do the smoothing. His partner Doctor Greiner did. And Doctor Renner was asked, how long after you recontoured the tooth would you have made an appointment. A couple of weeks.

MR. KASSEL: I don't recall this being shown to the doctor.

MR. COLES: This was shown to Doctor Renner and he acknowledged it.

THE COURT: Counsel approach.

(Whereupon, there was an off the record discussion.)

MR. COLES: Folks, do you remember when Doctor Renner was questioned on this subject, he was asked what would you have done had you been in this situation and Doctor Renner said I would have absolutely told the patient to come back in a couple of weeks. And we asked him, what would you have you said to the patient? He said, I would have recontoured the tooth. I would have said you need to come back. I'm going to check it. And what would you have done if the smoothing didn't work. He said, we

go to plan B. He told you that from the stand. And what was plan B, extraction. That is what Doctor Renner said. He knew from the letter that Doctor Billman sent that smoothing was the first option. Extraction was the second. Mr. Lovelace himself told you he knew that was the plan. We can take that down.

So when Doctor Greiner sees the patient and smoothes the tooth he knows that he has to have the patient come back in. You heard Doctor Renner was questioned did Doctor Greiner tell the patient to come back in. Doctor Greiner told Doctor Renner yes. Now, I don't know the answer to that. One of two things happened and it's up to you to folks to decide. Either Doctor Greiner told the patient to come back in after the tooth was smoothed, or Doctor Greiner did not tell the patient to come back in. If Doctor Greiner told the patient to come back in he didn't. If Doctor Greiner did not tell the patient to come back in after the tooth was smoothed you will remember every Doctor who testified said that would be negligent. Doctor Fonseca said, Doctor Greiner was in the best position to know what was going on and to address it in November.

You may remember Doctor Spalla said -- and I put in quotes and he agreed with these words -- Doctor

Spalla referred to Doctor Greiner and Doctor Renner as being a very disappointing breach of the standard of care, lazy in their practice and they didn't take care of the patient. That's if when the patient comes in to have the tooth smoothed they don't follow up. Doctor Renner himself told you that. He was talking about his own practice and his own partner and I think you will recall how uncomfortable he was, but he agreed. He said absolutely. We dentists know if you have a patient in the chair who has a lesion that is angry or ugly and you smoothed down a tooth to address it, of course you have to have the patient back. And what is equally important is Mr. Lovelace told you he knew that. Mr. Lovelace told you repeatedly he knew that was what Doctor Billman had told him. Smooth and then extract. That's what the letter says. Mr. Lovelace said he knew that. And please remember that an expert witness that we did not call. They called. Doctor Spalla said, if it had been smoothed and extracted if needed the cancer would never have happened.

I am going to move on now to Mr. Lovelace. And I want to talk to you for a few moments about him. As I mentioned -- and I'm not going to put it back up -- he was asked in his deposition, do you deny you were told

conversations happening six years ago can fade. That's why doctors document their files, so they know what happened and they can remember. I wish that Doctor Billman had said cancer. He didn't. We wouldn't be here. You know, his habit is to talk to patients. Maybe his habit included talking about cancer, but habit is not determinative. There are plenty of people who brush their teeth every day and that's their habit, and then one day they don't do it. This are plenty of people who never run red lights. That's their habit, and then one day they do it. Habit is not determinative. What you did in past doesn't necessarily mean what you do in the future. You know how they treat this in the airlines industry. You're coming in for a landing, did I put my landing gear down. It's my habit, to always put it down. I'm sure I put it down. Foolishness. In the airline industry you have a checklist. Landing gear down. Roger. You save lives. You rely on procedures and check lists. You don't rely simply on habit. It's not enough. It's not determinative. It's not fool-proof.

Let me talk a little bit in response about Tom and when he said was negligent and that Tom didn't mitigate. What Tom didn't do. What they don't say to

have one reasonably been foreseen or anticipated. In other words, the intervening negligence of the third party, Doctor Greiner, will not excuse the first wrongdoer, Doctor Billman, if such intervention ought to have been foreseen in exercise of due care. The negligence of a later treating Doctor Greiner is foreseeable. If you send a letter like Doctor Billman sent just saying trauma and not saying return, Greiner sees that letter he just thinks trauma. He doesn't return. Doctor Billman set this up. Greiner, maybe he should have done more, but Doctor Billman's actions set this up.

Look at this. We're talking about cars. The car is like the lesion going down the road. May 13th, 2015, differential diagnosis. If Doctor Billman had done that, informed Tom, informed Renner correctly, scheduled a return appointment, documented his file then that car takes off on that exit, June, July, and August of 2015, the excision of the lesion is done. Game over.

If Doctor Billman doesn't do what he needs to do; inform Tom, inform Renner correctly, suggest urgency, return appointment, then that car, that lesion is heading down the highway. It's going to pass that safe exit of excision. It's going to hit Doctor

while the other jurors are missing.

(WHEREUPON, there was a recess.)

THE COURT: We have a verdict. Bring the jury in. Post trial motions on Monday the 25th okay with the plaintiff?

MR. KASSEL: Fine.

THE COURT: Defense?

MR. TIERNEY: Yes, sir.

(WHEREUPON, the jury enters the courtroom at 4:42 p.m.)

THE COURT: Madam foreperson has the jury reached a verdict?

FOREPERSON: We have, Your Honor.

THE COURT: Hand it to the bailiff, please.

(WHEREUPON, the verdict was handed up to the court.)

THE COURT: Madam clerk, publish the verdict, please.

THE CLERK: The State of South Carolina, County of York in the Court of Common Pleas, case number 2019-CP-46-01736, Thomas Lovelace and Carol Lovelace versus The Center for Oral and Maxillofacial Surgery, Pa and Mark Billman, DMD, MD. We the jury find the defendant, Mark Billman, DMD, MD, was negligent and his negligence was a proximate cause of plaintiff's

injuries. Jury checked yes. We the jury find the plaintiff, Tom Lovelace, was negligent and his negligent was a proximate cause of his injuries and damages. Jury checked yes. Jury finds forty percent of plaintiff, Tom Lovelace's fault and sixty percent of the defendant, Mark Billman's fault.

Was the plaintiff, Tom Lovelace, negligence greater than fifty percent. Jury checks no. State the amount of actual damages that have been proven by greater weight of evidence, two million, Tom Lovelace's damages and zero for Carol Lovelace's loss of consortium damages.

Signed by the foreperson, Kimberly C. Nelson on June 18, 2021. Ladies and gentleman, if this is your verdict please indicate by raising your right hand.

Let the record reflect all jurors affirmed the verdict.

THE COURT: Would the plaintiff like the jury individually polled.

MS. MCVEY: No, Your Honor.

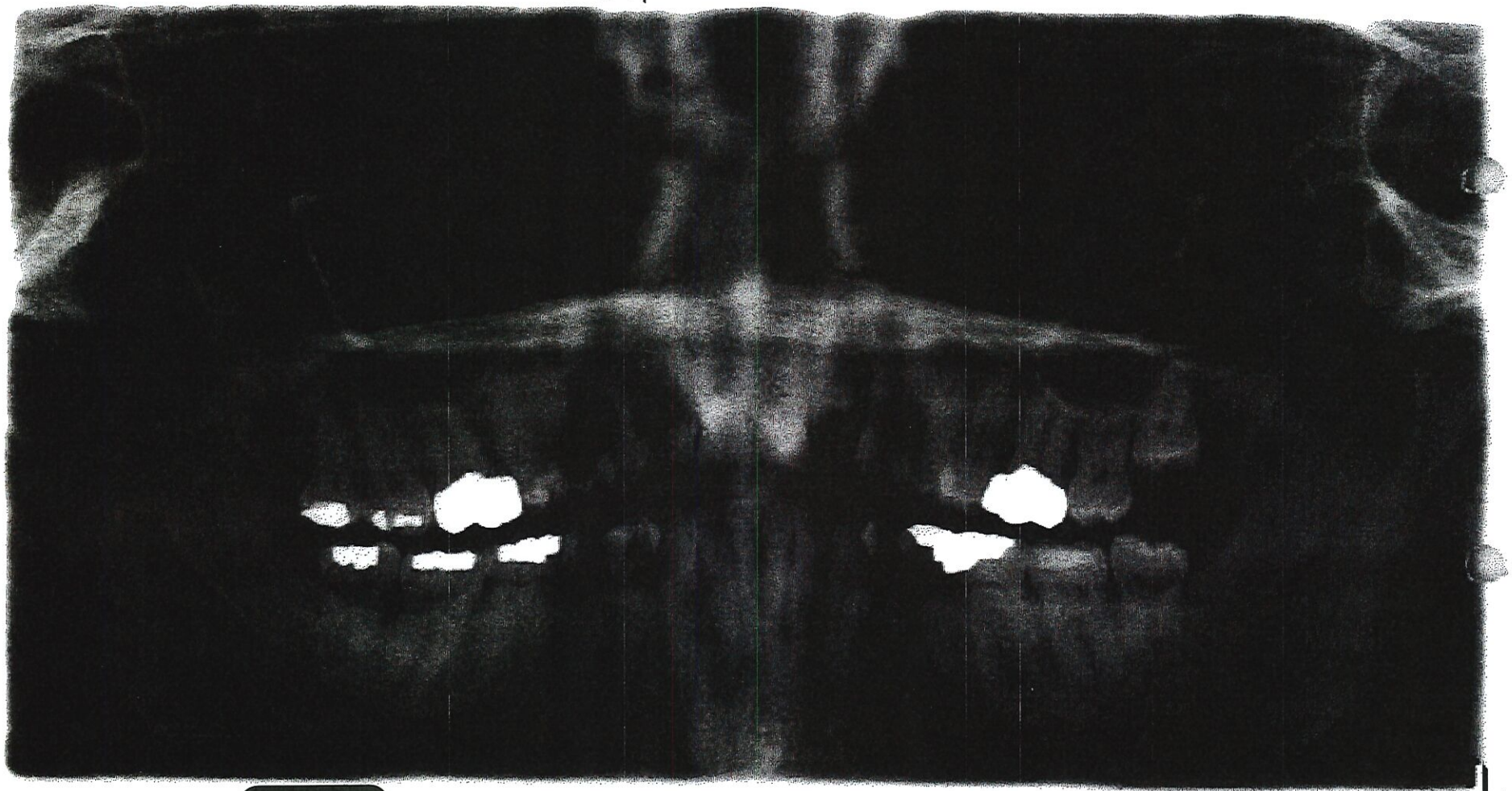
THE COURT: The defense?

MR. TIERNEY: No, Your Honor.

THE COURT: Anything from the plaintiff before we release the jury?

MS. MCVEY: No, sir.

Thomas
Lovelace
taken 8.8.11



tabbies
DEFENDANT'S EXHIBIT
2

172

0001 BILLMAN

The Cente
For Oral & Maxillofacial
Surgery, P.A.

www.thecenterforoms.com

Ft mill 1130 13th

☐ Marjorie J. Risser, D.M.D.
☐ Rhonda G. Carter, D.D.S.
☒ Thomas H. Simpson, Jr., D.M.D., M.D.
☐ Mark T. Billman, D.M.D., M.D.

☐ 372 South Herlong Avenue
Rock Hill, S.C. 29732
(803) 324-1160
Fax (803) 324-2456
rhoms@comporium.net

☐ 1698 W. Hwy. 160, Suite 100
Fort Mill, S.C. 29708
(803) 802-7700
Fax (803) 802-7703
fmoms@comporium.net

☐ 901 West Meeting Street
Suite 100
Lancaster, SC 29720
(803) 285-9492
Fax (803) 285-6383
laoms@comporium.net

Today's Date 4-30-15

Patient's Name Tom Lovelace Phone ( )

Appointment Date and Time _____

Referred by Dr. Rob Renner DDS

Referring Dr.'s Phone No. (803) 684-2366

For Examination of: right side of tongue

Remarks _____

Radiographs included? ☐ Yes ☐ No

Patients can go online and register ahead of time at www.thecenterforoms.com.

Thank you for choosing our practice to provide your care. In order to adequately evaluate your medical and dental needs and properly plan our surgical procedure, we require that all patients have an examination and consultation performed in our office at least 24 hours prior to your surgery.

(Maps on Reverse Side)

PF 112

THE CENTER FOR ORAL & MAXILLOFACIAL SURGERY, P.A.

Patient Information

Date: May 13, 2015

☑ Mr. ☐ Mrs. ☐ Ms. First Name: Thomas Middle Initial: C Last Name: Lovelace

Sex: ☑ Male ☐ Female Date of Birth: Age: 60 Social Security No:

Address: 1971 Knoll Ridge Rd

City: York State: SC Zip: 29745

Home Phone #: (803) 684-0090 Cell Phone #: (803) 448-8092

Other Phone #: ( )

Physician: Dr. Holeman City: York State: SC

Dentist: Dr. Renner City: York State: SC

Orthodontist: City: State:

Referred By: Dr Rob Renner

Student? ☐ Full Time ☐ Part Time

School Name:

School Address:

Marital Status: ☑ Married ☐ Divorced ☐ Legally Separated ☐ Widow ☐ Single

Employment Status: ☑ Full Time ☐ Part Time ☐ Retired ☐ Not

Employer Phone #:

Who will be responsible for your account?

Relation: ☑ Self ☐ Spouse ☐ Mother ☐ Father ☐ Other

Name: Soc. Sec. #:

Home Telephone: ( ) DOB of Responsible Party:

Address:

City: State: Zip:

Responsible Party Employer Phone#:

Date: 5-13-15

Health History

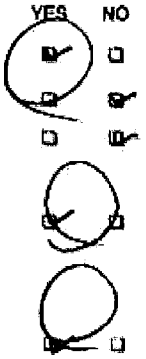
Name Thomas C Lovelace Account #

To our patients:

Although oral surgeons primarily treat the area in and around your mouth, your mouth is a part of your entire body. Health problems that you may have or medication that you may be taking, could have an important interrelation ship with the care that you will be receiving. Thank you for answering the following questions. Your answers are for our record only and will be considered confidential.

Reason for today's office visit

	YES	NO
Are you in good health?	☑	☐
Have there been any changes in your general health in the past year?	☐	☑
Are you under the care of a physician? Date of last visit:	☐	☑
If so, for what are you being treated?		
Have you had any illness, operation or been hospitalized in the past five years? Rotator Cuff		
Do you have unhealed injuries or inflamed areas in or around your mouth, growth or sore spots in your mouth?		
If so, describe where Tongue		



HAVE YOU HAD OR DO YOU CURRENTLY HAVE...	Yes	No	NOTES
Rheumatic fever?		✓	
Damaged heart valves / mitral valve prolapse?		✓	
Heart murmur?		✓	
High blood pressure?		✓	
Low blood pressure?		✓	
Chest pain, angina?		✓	
Heart attack(s)?		✓	
Irregular heart beat?		✓	
Cardiac pacemaker?		✓	
Heart surgery?		✓	
Bronchitis, chronic cough?		✓	
Asthma?		✓	
Hay fever / Sinus problems?		✓	
Tuberculosis?		✓	
Emphysema?		✓	
Difficulty breathing? Any other lung trouble?		✓	
Do you smoke?		✓	
Blood transfusion?		✓	
Blood disorder such as anemia?		✓	
Bruise easily?		✓	
Bleeding tendency (abnormal bleed?)		✓	
Jaundice, hepatitis or liver disease?		✓	
Infectious mononucleosis?		✓	
Gallbladder trouble?		✓	
Fainting spells?		✓	
Convulsions, epilepsy?		✓	

HAVE YOU HAD OR DO YOU CURRENTLY HAVE...	Yes	No	NOTES
Stroke?		✓	
Thyroid trouble?		✓	
Diabetes?		✓	
Low blood sugar?		✓	
Kidney trouble?		✓	
Are you on dialysis?		✓	
Swollen ankles, arthritis or joint disease?		✓	
Stomach ulcers?		✓	
Contagious diseases?		✓	
Sexually transmitted disease?		✓	
A prosthetic joint / implant?		✓	
Problems of the immune system?		✓	
HIV and/ or Aids?		✓	
A tumor or growth?		✓	
Mental health problems?		✓	
Are you wearing a removable dental appliance?		✓	
Are you on a diet?		✓	
Habit-forming drugs?		✓	
Contact lenses?		✓	
Eye disease / glaucoma?		✓	
X-Ray treatment / chemotherapy?		✓	
Chronic fatigue / Night sweats?		✓	
Pain & Clicking of jaws when eating?		✓	
Malignant Hyperthermia?		✓	
Have you had anything to eat or drink in the last 8 hours?	✓		

Date: May 13, 2015

Name Thomas C Lovelace Account # _____

MEDICATIONS	YES	NO
ARE YOU NOW TAKING ANY KIND OF MEDICINE, DRUG OR PILLS FOR ANY PURPOSE?	☐	☑
Anticoagulants? (Blood Thinners)	☐	☑
Tranquilizers?	☐	☑
Cortisone?	☐	☑
Herbal Supplements? (Please list)_____	☐	☑
Other medications? (Please list)_____	☐	☑

ALLERGIES	YES	NO
Allergic To Penicillin?	☐	☑
Allergic To Other antibiotics?	☐	☑
Allergic To Sodium pentothal, Vallum, or other tranquilizers?	☐	☑
lergic To Aspirin?	☐	☑
Allergic To Codeine or other narcotics?	☐	☑
ARE YOU ALLERGIC TO OR HAD A REACTION TO LOCAL ANESTHETICS?	☐	☑
Allergic To Other medications? (Please list)_____	☐	☑
Allergies other than drug allergies (Please list)_____	☐	☑

IS THERE ANY CONDITION CONCERNING YOUR HEALTH OR FAMILY'S ANESTHETIC HISTORY THAT THE DOCTOR SHOULD BE TOLD?	☐	☐

WOMEN:

Is there a possibility that you may be pregnant?	☐	☐
Estimated delivery date?	☐	☐
Are you nursing?	☐	☐
Are you using any birth control method?	☐	☐

WOMEN NOTE: Antibiotics (such as penicillin) may alter the effectiveness of birth control pills. Consult your physician / gynecologist for assistance regarding additional methods of birth control.

I certify that I have read and understand the questions above. I acknowledge that my questions, if any, about the inquiries set forth above have been answered to my satisfaction. I will not hold my surgeon, or any other member of his / her staff, responsible for any errors or omissions that I have made in the completion of this form.

Signature of patient: _____ Date: May 13, 2015

(Parent or Guardian if minor)

THE CENTER FOR ORAL AND MAXILLOFACIAL SURGERY

HIPAA AUTHORIZATION AND MEDICAL RECORDS RELEASE FORM

Under the HIPAA, Health Insurance Portability & Accounting Act of 1996, I understand that I have certain rights to privacy regarding my protected health information. I understand that this information may include individually identifiable health and demographic information. I understand that this information can and will be used to:

•Conduct, plan and direct my treatment. This may include sending information to multiple healthcare providers who may be involved in treatment either directly or indirectly

•To obtain payment which includes from third-party payers (insurance carriers, worker's compensation, liability in some instances) and myself

•To conduct normal healthcare operations such as quality assessments and physicians certifications

I ELECT TO ALLOW THE FOLLOWING TO RECEIVE INFORMATION REGARDING MY MEDICAL TREATMENT AND CARE INCLUDING:

•Appointment information, date, time and scheduling of appointments.

•Medical Information discussed with my physicinn and/or copies of my medical records.

•Test results written or verbal

Authorized Person	Relationship	DOB	Information to be released
Carol Lovelace	Wife		All

I understand that I may revoke this consent in writing at any time excluding information previously released regarding this consent.

Patient Name Printed: Thomas C Lovelace

Signature of Patient or Guarantor: [signature]

Relationship to Patient: Self

Patient's Date of Birth: _____

Today's Date: May 13, 2015

Witness: POH **Date:** 5.13.15

Lovelace, Thomas 104378
Birth:
Ref by: Dr. Rob Renner

EXAMINATION FORM

Patient Name (Number) DOB ' Date 5-13-15

BP: 104 / 104 **Pulse:** 77 **SpO2:** 98% **Weight:** 129 kg 284 lbs **Height:** 6'0 **BMI:** 39.2
CC: __pain __swelling __infection ✓refered for eval
Biopsy - Tooth - Dr. Rob Renner
Pertinent PMH: ✓none __DM __HTN __Asthma __OSAS

Meds: ϕ
Allergies: NKDA
Pertinent FMH/ SHX: __none
TMJ Symptoms: Y N
Objective:

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	X	L
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	
R				A	B	C	D	E	F	G	H	I	J				L
				T	S	R	Q	P	O	N	M	L	K				

X=missing / =decayed -- =nonrestorable ^=impacted O=painful

Tori / Alveolar irreg: Area: (B) mand (bilat)
Soft Tissue __WNL Other: (R) Lat Buccal tooth #32 - Irritation
Remaining oral exam: __WNL Other:
TMJ: clicking? __No __Yes, pain? __No __Yes, decreased opening? __No __Yes
Other:
Perio Status: __Good __Gingivitis __Recession __Periodontitis

Panorex:
Right condyle: ___WNL, Left condyle: ___WNL, Right antrum: ___WNL
Left antrum: ___WNL, Other findings:
Other Radiograph:

Dx: Tooth #32
ASA: __I __II __III __IV **MALLAMPATTI:** __1 __2 __3 __4
PLAN: ___Local ___N_2O ___IV Sedation: __minimal__moderate__ Deep___GA ___OR
Removal of teeth #
Other
Reason for IV sedation:
Consent form reviewed: Y N **Special risks discussed:**

Rx: Per Lov

Lov DNS to consider
Retention/ext #32

Surgeon:

Exam Date: 5/13/15

Revised 5/14

The Center For Oral & Maxillofacial Surgery, P.A.
372 South Herlong Avenue
Rock Hill, SC 29732-1160
(803) 324-1160

Mark Billman DMD, MD
State License #: 30-SC3687
DEA #: BB4189723
NPI #: 1235119504

Name Thomas Lovelace Age 60

Address 1971 Knoll Ridge Rd.
York, SC 29745 Date 5/13/2015

℞ Peridex Mouthrinse

Quantity: 1 Bottle

Frequency: Rinse with 1capful BID and spit out

MD, MD
Dispense As Written

MD, MD
Substitution Permitted

507C3 / 5.1.0.55

OFFICE ROUTING SLIP

Lovelace, Thomas 104378
05/13/2015

CODE/PROCEDURE:		FEE
✓	99202 OVNP 1 (Under 21 only)	87.
____	99203 OVNP 2	142.
____	99222 History & Physical (Inpat.)	247.
____	99204 History & Physical (Outpat.)	210.
____	99211 OVEP 1	53.
____	99212 OVEP 2	74.
____	85610 Prothrombin Time	37.
____	70355 X-ray, Panorex	105.
____	**70350 X-ray, Ceph	116.
____	**70330 X-ray, TMJ Bilateral	168.
____	70300 X-ray, PA 1st	40.
____	70300 X-ray, PA each additional	18.
____	70310 X-ray, Occlusal	65.
____	D9630 Oral Premedication	____
____	**A4550Surgical Tray	80.
____	**A4550Surgical Tray	____
____	**D7111 Removal Coronal Remnant Deciduous Tooth _____	95.
____	D7140 Ext. erupted tooth or exposed Root _____	140.
____	D7250 SR Residual Tooth Root # _____	250.
____	D7210 SR erupted tooth _____ # _____	235.
____	D7220 SR imp. tooth, Tissue ____ # _____	290.
____	D7230 SR imp. tooth, Partial Bony # _____	380.
____	D7240 SR imp tooth, Complete Bony or Bony Sec. #_____ _____	450.
____	D7241 SR imp. tooth, difficult # _____	547.
____	D7280 Surgical exposure of impact tooth to facilitate eruption # _____	468.
____	**D7283 Placement of a device to facilitate erupt of imp tooth # _____	122.
____	**D7311 Alveoloplasty,w/extractions _____quad	275.
____	**D7321 Alveoloplasty w/out ext. _____quad	510.

**MEDICAID WILL NOT PAY

____	**21029 Remove lateral exostoses	830.
____	**21031 Remove mandibular torus	940.
____	**21032 Remove palatal torus	1000.
____	**41822 Remove fibrous tuberosity	530.
____	**41823 Remove osseous tuberosity	750.
____	**41520 Frenoplasty, lingual	715.
____	**40819 Frenum, excise, labial/buccal	600.
____	41008 I & D, Submand., Intraoral	740.
____	41009 I & D, Buccal, Intraoral	740.
____	41009 I & D. Canine, Intraoral	740.
____	41017 Extraoral I&D,Submand.	780.
____	41018 Extraoral I&D Masticator space	800.
____	**21248 Implant, Cylinder _____ _____	2000./ea
____	40812 Excise vestibular lesion, mucosa, Submucosa	575.
____	40814 Excise vestibular lesion, Complex	890.
____	40816 Excise vestibular lesion, Complex, with muscle	1200.
____	41112 Excise tongue lesion Anterior 2/3	600.
____	41113 Excise tongue lesion, Posterior 1/3	750.

ANESTHESIA

____	D9220 General Anesthesia 1st. 30 Minutes	400.
____	**D9221 General Anesthesia ___ Each Add'l. 15 Minutes	180.
____	D9241 IV Sedation-1st. 30 Minutes	360.
____	**D9242 IV Sedation ___ Each Add'l. .15 Minutes	140.
____	D9230 Nitrous Oxide Analgesia	85.
____	00170 Anesthesia by separate Provider _____ +_____ time units of 15 minutes @ 100.00/unit	440.
____	D9248 Non IV Sedation	280.
____	_____ _____	

TOTAL FEE TODAY'S VISIT 87.00
AMOUNT PAID TODAY 0
TOTAL SURGERY FEE _____
SURGERY DEPOSIT _____
DEPOSIT PAID _____

Doctor's scheduling notes:
Diabetes **Immediate Denture** **Blood Pressure**
Coumadin **Other** Xrays for Dr Review

☐ **30 Min.** ☐ **45 Min.**

Rev. 12/01/2012

0011 BILLMAN

The Center
For Oral & Maxillofacial Surgery, P.A.

THOMAS H. SIMPSON, JR., D.M.D., M.D.
MARJORIE J. RISSER, D.M.D.
MARK T. BILLMAN, D.M.D., M.D.
RHONDA G. CARTER, D.D.S.
DIPLOMATES AMERICAN BOARD OF
ORAL AND MAXILLOFACIAL SURGERY

Date: May 13, 2015

Dear Dr, Rob Renner,

Re: Thomas Lovelace

This report is sent so that you may have a record in your files for Thomas Lovelace

Date of Treatment:

Diagnosis:

RIGHT LATERAL BORDER TONGUE ULCERATION (TRAUMA)

Comments:

THANK YOU FOR REFERRING MR. LOVELACE. I FEEL THE LESION IS FROM MALPOSITIONED #32. RECONTOURING MAY HELP, BUT I ALSO DISCUSSED EXTRACTION WITH MR LOVELACE. HE IS TO DISCUSS THESE OPTIONS WITH YOU.

THANKS AGAIN

MARK

372 S HERLONG AVE • ROCK HILL S C 29732
(803) 324-1160 • FAX (803) 324-2456

1698 W HWY 160, STE 120 • FORT MILL S C 29708
(803) 802-7700 • (803) 802-7703

801 W MEETING ST STE 100 • LANCASTER S C 29720
(803) 285-9492 • FAX (803) 285-6381

www.thecenterforoms.com

YORK DENTAL GROUP

PO BOX 712/553 E. ALEXANDER LOVE HWY

YORK, SOUTH CAROLINA 29745

803-684-2366 – 803-684-9101-FAX

Dr. Billman

1698 SC – 160

Fort Mill, SC 29715

803.802.7700

We are referring [illegible] Lovelace for ext of #3.2

If you need any other information, please call.

Thank you!

York Dental Group

Dr. Robert J. Renner, DDS, FAGD

THE CENTER FOR ORAL & MAXILLOFACIAL SURGERY, P.A.

Patient Information

Date: Aug 17, 2016

☒ Mr. ☐ Mrs. ☐ Ms. First Name: Thomas Middle Initial: C Last Name: Lovelace

Sex: ☒ Male ☐ Female Date of Birth: _____ Age: 62 Social Security No: _____

Address: 1971 Knoll Ridge Rd

City: York State: SC Zip: 29745

Home Phone #: (803) 684-0090 Cell Phone #: (_____) _____

Other Phone #: (803) 448-8092

Physician: Dr Holman City: York State: SC

Dentist: Dr Grinnor, Dr Rinner City: York State: SC

Orthodontist: _____ City: _____ State: _____

Referred By: ~~Dr Gr~~ Dr Rinner

Student? ☐ Full Time ☐ Part Time

School Name: _____

School Address: _____

Marital Status: ☒ Married ☐ Divorced ☐ Legally Separated ☐ Widow ☐ Single

Employment Status: ☒ Full Time ☐ Part Time ☐ Retired ☐ Not

Employer Phone #: _____

Who will be responsible for your account?

Relation: ☒ Self ☐ Spouse ☐ Mother ☐ Father ☐ Other _____

Name: _____ Soc. Sec. #: _____

Home Telephone: (_____) _____ DOB of Responsible Party: _____

Address: _____

City: _____ State: _____ Zip: _____

Responsible Party Employer Phone#: _____

AUG 17 2016

Date

Health History

Name Tom Lovelace Account #

To our patients:

Although oral surgeons primarily treat the area in and around your mouth, your mouth is a part of your entire body. Health problems that you may have or medication that you may be taking, could have an important interrelation ship with the care that you will be receiving. Thank you for answering the following questions. Your answers are for our record only and will be considered confidential.

Reason for today's office visit Sore tongue

	YES	NO
Are you in good health?	☑	☐
Have there been any changes in your general health in the past year?	☐	☑
Are you under the care of a physician? Date of last visit:	☐	☑
If so, for what are you being treated?		
Have you had any illness, operation or been hospitalized in the past five years? Apicoectomy	☑	☐
Do you have unhealed injuries or inflamed areas in or around your mouth, growth or sore spots in your mouth?	☑	☐
If so, describe where tongue		

HAVE YOU HAD OR DO YOU CURRENTLY HAVE...	Yes	No	NOTES
Rheumatic fever?		X	
Damaged heart valves / mitral valve prolapse?		X	
Heart murmur?		X	
High blood pressure?		X	
Low blood pressure?		X	
Chest pain, angina?		X	
Heart attack(s)?		X	
Irregular heart beat?		X	
Cardiac pacemaker?		X	
Heart surgery?		X	
Bronchitis, chronic cough?		X	
Asthma?		X	
Hay fever / Sinus problems?		X	
Tuberculosis?		X	
Emphysema?		X	
Difficulty breathing? Any other lung trouble?		X	
Do you smoke?		X	
Blood transfusion?		X	
Blood disorder such as anemia?		X	
Bruise easily?		X	
Bleeding tendency (abnormal bleed?)		X	
Jaundice, hepatitis or liver disease?		X	
Infectious mononucleosis?		X	
Gallbladder trouble?		X	
Fainting spells?		X	
Convulsions, epilepsy?		X	

HAVE YOU HAD OR DO YOU CURRENTLY HAVE...	Yes	No	NOTES
Stroke?		X	
Thyroid trouble?		X	
Diabetes?		X	
Low blood sugar?		X	
Kidney trouble?		X	
Are you on dialysis?		X	
Swollen ankles, arthritis or joint disease?		X	
Stomach ulcers?		X	
Contagious diseases?		X	
Sexually transmitted diseases?		X	
A prosthetic joint / implant?		X	
Problems of the immune system?		X	
HIV and/ or Aids?		X	
A tumor or growth?		X	
Mental health problems?		X	
Are you wearing a removable dental appliance?		X	
Are you on a diet?		X	
Habit-forming drugs?		X	
Contact lenses?		X	
Eye disease / glaucoma?		X	
X-Ray treatment / chemotherapy?		X	
Chronic fatigue / Night sweats?		X	
Pain & Clicking of jaws when eating?		X	
Malignant Hyperthermia?		X	
Have you had anything to eat or drink in the last 6 hours?	X		

BILLMAN 0015

Date: AUG 17 2016

Name _____ Account # _____

MEDICATIONS	YES	NO
ARE YOU NOW TAKING ANY KIND OF MEDICINE, DRUG OR PILLS FOR ANY PURPOSE?	☐	☒
Anticoagulants? (Blood Thinners)	☐	☒
Tranquilizers?	☐	☒
Cortisone?	☐	☒
Herbal Supplements? (Please list)_____	☐	☒
Other medications? (Please list)_____	☐	☒

ALLERGIES	YES	NO
Allergic To Penicillin?	☐	☒
Allergic To Other antibiotics?	☐	☒
Allergic To Sodium pentothal, Valium, or other tranquilizers?	☐	☒
Allergic To Aspirin?	☐	☒
Allergic To Codeine or other narcotics?	☐	☒
ARE YOU ALLERGIC TO OR HAD A REACTION TO LOCAL ANESTHETICS?	☐	☒
Allergic To Other medications? (Please list)_____	☐	☒
Allergies other than drug allergies (Please list)_____	☐	☒
IS THERE ANY CONDITION CONCERNING YOUR HEALTH OR FAMILY'S ANESTHETIC HISTORY THAT THE DOCTOR SHOULD BE TOLD?	☐	☐

WOMEN:		
Is there a possibility that you may be pregnant?	☐	☐
Estimated delivery date?	☐	☐
Are you nursing?	☐	☐
Are you using any birth control method?	☐	☐

WOMEN NOTE: Antibiotics (such as penicillin) may alter the effectiveness of birth control pills. Consult your physician / gynecologist for assistance regarding additional methods of birth control.

I certify that I have read and understand the questions above. I acknowledge that my questions, if any, about the inquiries set forth above have been answered to my satisfaction. I will not hold my surgeon, or any other member of his / her staff, responsible for any errors or omissions that I have made in the completion of this form.

Signature of patient: _____ Date: Aug 17, 2016

(Parent or Guardian if minor)

THE CENTER FOR ORAL AND MAXILLOFACIAL SURGERY

HIPAA AUTHORIZATION AND MEDICAL RECORDS RELEASE FORM

Under the HIPAA, Health Insurance Portability & Accounting Act of 1996, I understand that I have certain rights to privacy regarding my protected health information. I understand that this information may include individually identifiable health and demographic information. I understand that this information can and will be used to:

•Conduct, plan and direct my treatment. This may include sending information to multiple healthcare providers who may be involved in treatment either directly or indirectly

•To obtain payment which includes from third-party payers (insurance carriers, worker's compensation, liability in some instances) and myself

•To conduct normal healthcare operations such as quality assessments and physicians certifications

I ELECT TO ALLOW THE FOLLOWING TO RECEIVE INFORMATION REGARDING MY MEDICAL TREATMENT AND CARE INCLUDING:

•Appointment information, date, time and scheduling of appointments.

•Medical Information discussed with my physician and/or copies of my medical records.

•Test results written or verbal

Authorized Person	Relationship	DOB	Information to be released
Carol Lovelace	Wife		All

I understand that I may revoke this consent in writing at any time excluding information previously released regarding this consent.

Patient Name Printed: Thomas C Lovelace

Signature of Patient or Guarantor: [signature]

Relationship to Patient: Self

Patient's Date of Birth: _____

Today's Date: Aug 17, 2016

Witness: [signature] **Date:** 8.17.16

Lovelace, Thomas 104378
Birth:
Ref by: Dr. Rob Renner

THIRD MOLAR EXAM FORM

62 8.17.16
r) Age Date

BP: 116/112 **Pulse:** 74 **SpO2:** 98% **Weight:** 129 kg 284 lbs **Height:** 6'4 **BMI:** 39%
CC: __pain __swelling __infection __dental crowding __Hx/o orthodontics __refered

Pertinent PMH: __none __DM ✓HTN __Asthma __OSAS

Meds: ø
Allergies: NKDA
Pertinent FMH/ SHX: __none
Subjective TMJ Symptoms: Y N
Panorex:
Right condyle: ___WNL Left condyle: ___WNL Right antrum: ___WNL
Left antrum: ___WNL Other findings:

#1: not visible- part/full erupted – malposed, B L – caries – pericoronitis
__ST __PB __CB __Vertical __DA __ MA __ Horiz. **CDT 72**___
__2nd molar encroachment/damage __ follicle/cyst __caries

#16: not visible- part/full erupted – malposed, B L – caries – pericoronitis
__ST __PB __CB __Vertical __DA __ MA __ Horiz. **CDT 72**___
__2nd molar encroachment/damage __ follicle/cyst __caries

#17: not visible- part/full erupted – malposed, B L – caries – pericoronitis
__ST __PB __CB __Vertical __DA __ MA __ Horiz. **CDT 72**___
__2nd molar encroachment/damage __ follicle/cyst __caries

#32: not visible- part/full erupted ✓ malposed, B L – caries – pericoronitis
__ST __PB __CB __Vertical __DA __ MA __ Horiz. **CDT 72**___
__2nd molar encroachment/damage __ follicle/cyst __caries
PLAN

Remaining oral exam: __WNL Other: (R) LAT BUCCAL TUBE ULCERATION GUM OPENING

ADDITIONAL TEETH:

Dx: PLAN #32 / MALPOSITION #32 / TUBE ULCERATION

ASA: __I/__II __III __IV **MALLAMPATTI:** __1 ✓2 __3 __4
PLAN: ✓Local ___N_2O ___IV Sedation: __minimal __moderate __ Deep ___GA ___OR Removal of teeth # 32 Other IM Dex (R) Toradol

Reason for IV sedation:
Consent form reviewed: Y N **Special risks discussed:**

Comments:

Rx:

Surgeon: Third molar exam date: 8/17/16

Revised 5/14

The Center For Oral & Maxillofacial Surgery, P.A.
372 South Herlong Avenue
Rock Hill, SC 29732-1160
(803) 324-1160

Mark Billman DMD, MD
State License #: 30-SC3687
DEA #: BB4189723
NPI #: 1235119504

Name Thomas Lovelace Age 62

Address 1971 Knoll Ridge Rd. York, SC 29745 Date 8/17/2016

℞ Peridex Mouthrinse

Quantity: 1 Bottle

Frequency: Rinse with 1 capful BID and spit out

MD, MD
Dispense As Written

MD, MD
Substitution Permitted

SC / CS / 8.1 0 55

The Center For Oral & Maxillofacial Surgery, P.A.
372 South Herlong Avenue
Rock Hill, SC 29732-1160
(803) 324-1160

Mark Billman DMD, MD
State License #: 30-SC3687
DEA #: BB4189723
NPI #: 1235119504

Name Thomas Lovelace Age 62

Address 1971 Knoll Ridge Rd. York, SC 29745 Date 8/17/2016

℞ Percocet 5/325

Quantity: #30

Frequency: 1 or 2 tabs PO Q4-6h prn pain. No Refills

MD, MD
Dispense As Written

MD, MD
Substitution Permitted

SC / CS / 8.1 0 55

OFFICE ROUTING SLIP

DATE: DIAGNOSIS:

Lovelace, Thomas 104378
08/17/2016

99202	OVNP1	87
99203	OVNP 2	142
99222	H&P (In-patient)	247
99204	H&P (Out-patient)	210
99211	OVEP 1	53
99212	OVEP 2	74
70355	X-RAY, PANOREX	105
70300	X-RAY, PA 1ST	40
70300	X-RAY, PA EACH ADDITIONAL	18
**A4550	SURGICAL TRAY	80
**D7111	REMOVAL CORONAL REMNANT DECIDUOUS TOOTH #	95
D7140	EXT. ERUPTED TOOTH OR EXPOSED ROOT # 32	140
D7250	SR RESIDUAL TOOTH ROOT#	250
D7210	SR ERUPTED TOOTH #	235
D7220	SR IMP. TOOTH, TISSUE #	290
D7230	SR IMP. TOOTH, PARTIAL BONY #	380
D7240	SR IMP. TOOTH, COMPLETE BONY OR BONY SEC #	450
D7241	SR IMP. TOOTH, DIFFICULT #	547
D7280	SURGICAL EXPOSURE OF IMPACT TOOTH TO FACILITATE ERUPTION #	468
**D7283	PLACEMENT OF DEVISE TO FACILITATE ERUPTION #	122
D7282	LUXATE TOOTH TO FACILITATE ERUPTION #	
**D7311	AVELOPLASTY W/ EXT X ___ QUAD @ 275 (CIRCLE UR UL LR LL)	____
**D7321	AVELOPLASTY W/O EXT X ___ QUAD @ 510 (CIRCLE: UR UL LR LL)	____
**21029	REMOVE LATERAL EXOSTOSES CIRCLE: UR UL LR LL	830
**21031	REMOVE MANDIBULAR TORUS CIRCLE: LR LL	940
**21032	REMOVE PALATAL TORUS CIRCLE: UR UL	1,000
**41822	REMOVE FIBROUS TUBEROSITY CIRCLE: UR UL LR LL	370
**41823	REMOVE OSSEOUS TUBEROSITY CIRCLE: UR UL LR LL	710

**MEDICAID WILL NOT PAY

**41520	FRENOPLASTY, LINGUAL	715
**40819	FRENUM,EXCISE,LABIAL/BUCCAL	600
41008	I&D, SUBMAND., INTRAORAL	740
41009	I&D, BUCCAL/CANINE INTRAORAL TOOTH #	740
41017	EXTRAORAL I&D, SUBMAND.	780
41018	EXTRAORAL I&D, MASTICATOR SPACE	800

IMPLANTS & GRAFTING

**21248	IMPLANT, CYL X ___ @ $2000 each = TOOTH #	
21208	BONE GRAFT AUGMENTATION I.E. SINUS LIFT; ONLAY GRAFT	2,000
70486	CT SCAN	375
D0470	IMPRESSION /MODEL	120
D4266	GUIDED TISSUE REGEN RESORBABLE MEMBRANE	
D4267	GUIDED TISSUE REGEN NON-RESORBABLE MEMBRANE	
86965	PRP/ PRF PLATELET RICH PLASMA/FIBRIN	

LESIONS & BIOPSIES

11100	BIOPSY	315
11441	BIOPSY .6-1cm	435
40812	EXCISE VESTIBULAR LESION, MUCOSA, SUBMUCOSA	575
40814	EXCISE VESTIBULAR LESION, COMPLEX	890
40816	EXCISE VESTIBULAR LESION, COMPLEX, WITH MUSCLE	1,200
41112	EXCISE TONGUE LESION, ANTERIOR 2/3	600
41113	EXCISE TONGUE LESION, POSTERIOR 1/3	750

ANESTHESIA

D9223	GENERAL ANESTHESIA ___ UNITS (15 MINS PER) X $200 =	
D9243	IV SEDATION ___ UNITS (15 MINS PER) X $180 =	
D9230	NITROUS OXIDE ANALGESIA	85
D9248	NON IV SEDATION (MASK)	280

TOTAL FEE TODAY'S VISIT	87.
AMOUNT PAID TODAY	
TOTAL SURGERY FEE	655
SURGERY DEPOSIT	196.
DEPOSIT PAID	pd 196. ✓

Doctor's notes:

□ Diabetes □ Immediate denture □ Blood pressure
□ Coumadin Other

□ 30 min □ 45 min □ ____

The Center For Oral & Maxillofacial Surgery, P.A.

CONSENT FOR BIOPSY PROCEDURE **Page 1 of 3**

Thomas C Lovelace — Aug 19, 2016

Patient's Name — Date

Please initial each paragraph after reading.
If you have any questions, please ask your doctor BEFORE initialing.

You have the right to be given information about your proposed surgery so that you may make an informed decision to have or not have surgery. A biopsy is a surgical procedure where a sample of tissue is taken for microscopic study to determine if it is normal.

In my case, the area of concern is: Right Tongue

It is planned to:

☐ Take out all the suspected tissue. If the biopsy report is suspicious for disease, you may need to take out more tissues to get a margin of safety,

OR

☒ Remove only enough tissue to get a good sample, leaving the rest behind. (This is usually done when the lesion is large, there is no cancer suspected, or the removal of all of it at this time would be unnecessarily difficult.) However, if the biopsy report is suspicious for disease, the entire lesion may have to be removed later.

Alternative treatment: methods include: _____

TLL 1. I understand that a biopsy requires a cut(s) in my mouth or on the skin that will need stitches, and sometimes the removal of bone tissue. My doctor has told me that there are certain risks that can occur with the surgery, including (but not limited to):

TLL A. Post-operative pain and swelling that may require several days of at-home recuperation.
TLL B. Bleeding that is heavy or may last a long time that may need additional treatment.
TLL C. An infection after the procedure that may need more treatment.
TLL D. Stretching of the corners of the mouth that may cause cracking and bruising and which may heal slowly.
TLL E. A difficulty in opening the mouth for several days. This is sometimes due to swelling and muscle soreness and sometimes to stress on the jaw joints (TMJ).
TLL F. Reactions to medications, anesthetics, sutures, etc.
TLL G. Injury to the nerves in the area of the biopsy which may result in pain or a tingling or numb feeling in the lip, chin, tongue (including the possibility of loss of taste sensation), cheek, gums or teeth, or in areas of the skin of the face. Usually this disappears slowly over several weeks or months, but sometimes the effects may be permanent.
TLL H. If bone tissue is removed, healing may take longer, some complications may be more likely (for example, bleeding), and the biopsy report may take longer due to special processing requirements.
TLL I. Opening into the sinus (a normal hollow place above the upper back teeth) needing more treatment.
TLL J. There is always a possibility that the lesion might come back in the same area, even when it appears to be totally removed.
____ K. Other: _____

TLL 2. I understand that I may need to come back to see the doctor for follow-up for a long time, even if the biopsy report shows no cancer. I understand that if I need to and don't return for follow-up, my condition may get to a point where I might need more care or more surgery, or the lesion might come back and be a threat to my health. I agree to schedule exams as instructed by the doctor and to tell the doctor if I think there is a change in my condition.

ANESTHESIA:

I have had the opportunity to speak with my doctor about my options for anesthesia. These options include:

- LOCAL ANESTHESIA: (Novocaine, Lidocaine, etc.) A shot is given to block pain in the area to be worked on.
- NITROUS OXIDE WITH LOCAL ANESTHESIA: Nitrous Oxide (or Laughing Gas) helps to lessen uncomfortable sensations and offers some relaxation.
- ORAL PREMEDICATION WITH LOCAL ANESTHESIA: A pill is taken for relaxation prior to giving local anesthesia.
- INTRAVENOUS SEDATION WITH LOCAL ANESTHESIA: makes you less aware of the procedure by making you calmer, sleepy, and less able to remember the procedure.
- INTRAVENOUS GENERAL ANESTHESIA WITH LOCAL ANESTHESIA: You will be completely asleep for the procedure.

The anesthetic I have chosen for my surgery is:

☒ Local Anesthesia

☐ Nitrous Oxide/Oxygen Analgesia with Local Anesthesia

☐ Oral Premedication with Local Anesthesia

☐ Intravenous Sedation with Local Anesthesia

☐ General Anesthesia with Local Anesthesia

INFORMATION FOR FEMALE PATIENTS

_____3. I have told my doctor that I use birth control pills. I have been told that the birth control pills might not work if I take them with some other medicines (like antibiotics) and I could become pregnant. I agree to talk to my own doctor to start some other type of birth control while I am being treated, and continue to use the other birth control until that doctor says I can stop it.

I understand the risks and potential complications of anesthesia to include:

JLV 4. Discomfort, swelling or bruising where the drugs are placed into a vein.

_____ 5. Vein irritation, called phlebitis, where the drugs are placed into a vein. Sometimes this may grow to a level of discomfort or disability where it may be difficult to move my arm or hand. Sometimes medication or other treatment may be needed.

JCL 6. Nerves travel next to the blood vessels where the drugs are placed into a vein. If the needle hits a nerve or if drugs or fluid leaks out of the vessel around a nerve, I may have numbness or pain in the nerve where it runs along the arm. Usually the numbness or pain goes away, but in some cases, it may be permanent.

JCL 7. Allergic reactions (previously unknown) to any of the medications used.

JCL 8. Nausea and vomiting, although not common, are possible unfortunate side effects. Bed rest, and sometimes medications, may be needed for relief.

JCL 9. Conscious sedation and deep sedation/general anesthesia are serious medical procedures and, whether given in a hospital or office, carry the risk of brain damage, stroke, heart attack or death.

JCL 10. In situations where a breathing tube is used, I may have a sore throat, hoarseness or voice change.

Fortunately, these complications and side effects are not common.
All forms of anesthesia are generally very safe, comfortable, and easy to deal with.
If you have any questions, PLEASE ASK.

MY OBLIGATIONS:

JCL 11. Because anesthetic or sedative medications (including oral premedication) cause drowsiness that lasts for some time, I MUST be accompanied by a responsible adult to drive me to and from surgery, and stay with me for several hours until I am recovered sufficiently to care for myself. Sometimes the effects of the drugs do not wear off for 24 hours.

JCL 12. During recovery time (normally 24 hours), I should not drive, operate complicated machinery or devices or make important decisions such as signing documents, etc.

JCL 13. I must have a completely empty stomach. It is vital that I have NOTHING TO EAT OR DRINK for **six (6) hours** prior to my treatment. TO DO OTHERWISE MAY BE LIFE-THREATENING.

JCL 14. **Unless instructed otherwise**, it is important that I take any regular medications (high blood pressure, antibiotics, etc.) or any medicines given to me by my surgeon **using only small sips of water**.

CONSENT

I understand that my doctor can't promise that everything will be perfect. I understand that the treatment listed above and other forms of treatment or no treatment at all are choices I have. I have read and understand the above and give my consent to surgery and chosen anesthesia. I have given a complete and truthful medical history, including all medicines, drug use, pregnancy, etc. I certify that I speak, read and write English. All of my questions have been answered before signing this form.

Patient's (or Legal Guardian's) Signature — Date: 8-19-16

Doctor's Signature — Date: 8/19/16

Witness' Signature — Date: 8/19/16

The Center For Oral & Maxillofacial Surgery, P.A.

CONSENT FOR ORAL SURGERY AND ANESTHESIA

Mr Thomas C. Lovelace
1971 Knoll Ridge Rd.
York, SC 29745

Aug 19, 2016
Patient's Name Date

Please initial each paragraph after reading. If you have any questions, please ask your doctor BEFORE initialing.

You have the right to be informed about your diagnosis and planned surgery so that you can decide whether to have a procedure or not after knowing the risks and benefits.

My diagnosis is: IMPACTED 3RD MOLES, TORUS LOWER

I agree that Dr. Billman and staff can do the following procedure:

REMOVE LOWER RIGHT 3RD MOLAR AND BIOPSY TORUS LOWER

Alternative treatment: methods include: NO TREATMENT

All surgeries have some risks. They include the following and others:

TCL 1. Swelling, bruising and pain.

TCL 2. Possible infection that might need more treatment.

TCL 3. Changes in the bite or difficulty in opening the mouth because of stress on the jaw joint (TMJ) may happen.

TCL 4. Possible damage to other teeth close to the ones being taken out, (more often those with large fillings or caps), or other tissues of the face or mouth might be harmed.

TCL 5. It is very rare that the bones of the jaw will break, but it is possible in cases where the teeth are buried very deep in their sockets.

TCL 6. Healing could take longer than expected.

TCL 7. The place where the tooth was taken out could be very painful (dry socket).

JCL 8. I might have a reaction to a medicine.

JCL 9. Sharp ridges or bone splinters may form later at or near where the tooth was taken out. These may need another surgery to smooth or remove.

JCL 10. The hole where the tooth had been might need more care, or small pieces of the tooth root might be left there to prevent damage to very important things like nerves or a sinus (a hollow place above your upper back teeth).

JCL 11. Upper back teeth are often close to the sinus and sometimes the tooth or a piece of root can get into the sinus and need more treatment. An opening may occur from the sinus into the mouth that may need more treatment.

JCL 12. The roots of the lower teeth might be very close to the sensory nerve and after the surgery; there might be pain or a numb feeling in the chin, lip, cheek, gums, teeth or tongue. It is possible that you might lose your sense of taste. This might last for weeks or months and can be permanent.

INFORMATION FOR FEMALE PATIENTS

_____13. I have told my doctor that I use birth control pills. I have been told that the birth control pills might not work if I take them with some other medicines (like antibiotics) and I could become pregnant. I agree to talk to my own doctor to start some other type of birth control while I am being treated, and continue to use the other birth control until that doctor says I can stop it.

ANESTHESIA:

I have had the opportunity to speak with my doctor about my options for anesthesia. These options include:

- LOCAL ANESTHESIA: (Novocaine, Lidocaine, etc.) A shot is given to block pain in the area to be worked on.
- NITROUS OXIDE WITH LOCAL ANESTHESIA: Nitrous Oxide (or Laughing Gas) helps to lessen uncomfortable sensations and offers some relaxation.
- ORAL PREMEDICATION WITH LOCAL ANESTHESIA: A pill is taken for relaxation prior to giving local anesthesia.
- INTRAVENOUS SEDATION WITH LOCAL ANESTHESIA: makes you less aware of the procedure by making you calmer, sleepy, and less able to remember the procedure.
- INTRAVENOUS GENERAL ANESTHESIA WITH LOCAL ANESTHESIA: You will be completely asleep for the procedure.

The anesthetic I have chosen for my surgery is:

- ☒ Local Anesthesia
- ☐ Nitrous Oxide/Oxygen Analgesia with Local Anesthesia
- ☐ Oral Premedication with Local Anesthesia
- ☐ Intravenous Sedation with Local Anesthesia
- ☐ General Anesthesia with Local Anesthesia

I understand the risks and potential complications of anesthesia to include:

JCL 14. Discomfort, swelling or bruising where the drugs are placed into a vein.

JCL 15. Vein irritation, called phlebitis, where the drugs are placed into a vein. Sometimes this may grow to a level of discomfort or disability where it may be difficult to move my arm or hand. Sometimes medication or other treatment may be needed.

JCL 16. Nerves travel next to the blood vessels where the drugs are placed into a vein. If the needle hits a nerve or if drugs or fluid leaks out of the vessel around a nerve, I may have numbness or pain in the nerve where it runs along the arm. Usually the numbness or pain goes away, but in some cases, it may be permanent.

JCL 17. Allergic reactions (previously unknown) to any of the medications used.

JCL 18. Nausea and vomiting, although not common, are possible unfortunate side effects. Bed rest, and sometimes medications, may be needed for relief.

JCL 19. Conscious sedation and deep sedation/general anesthesia are serious medical procedures and, whether given in a hospital or office, carry the risk of brain damage, stroke, heart attack or death.

JCL 20. In situations where a breathing tube is used, I may have a sore throat, hoarseness or voice change.

Fortunately, these complications and side effects are not common.
All forms of anesthesia are generally very safe, comfortable, and easy to deal with.
<u>If you have any questions, PLEASE ASK</u>.

MY OBLIGATIONS:

_____21. Because anesthetic or sedative medications (including oral premedication) cause drowsiness that lasts for some time, I MUST be accompanied by a responsible adult to drive me to and from surgery, and stay with me for several hours until I am recovered sufficiently to care for myself. Sometimes the effects of the drugs do not wear off for 24 hours.

_____22. During recovery time (normally 24 hours), I should not drive, operate complicated machinery or devices or make important decisions such as signing documents, etc.

_____23. I must have a completely empty stomach. It is vital that I have NOTHING TO EAT OR DRINK for **six (6) hours** prior to my treatment. TO DO OTHERWISE MAY BE LIFE-THREATENING.

_____24. **Unless instructed otherwise**, it is important that I take any regular medications (high blood pressure, antibiotics, etc.) or any medicines given to me by my surgeon **using only small sips of water.**

CONSENT

I understand that my doctor can't promise that everything will be perfect. I understand that the treatment listed above and other forms of treatment or no treatment at all are choices I have. I have read and understand the above and give my consent to surgery and chosen anesthesia. I have given a complete and truthful medical history, including all medicines, drug use, pregnancy, etc. I certify that I speak, read and write English. All of my questions have been answered before signing this form.

Patient's (or Legal Guardian's) Signature — Date: 8-19-16

Doctor's Signature — Date: 8/19/16

Witness' Signature — Date: 8/19/16

Lovelace, Thomas 104378
1971 Knoll Ridge Rd.
York, SC 29745

Home: (803) 684-0090

3rd Molar Extraction/Procedure Form

8/19/16

er) Age Date

NPO 6 hours: Y N Intake? _____ When? _____
Consent signed (Y) N **RBA discussed and understood** (Y) N
Monitors: ___ Automated BP ___ nasal O_2 ___ SaO_2 ___ ECG __ Steth __ ETCO2
___ ga. angiocath: R L ACF R L forearm/hand

Local: 1 carp Lido 2% w/epi 1:100K
___ carp Marc 0.5% w/epi 1:200K
___ carp Carbo 3% plain
1 carp Articaine 4% w/epi 1:100K

Procedure: ✓ Throat screen ✓ Bite block ✓ Jaw stabilized for TMJ prophylaxis

#1: __MP flap __ Vertical release __ Bone window __Elevator __ Forcep __ Follicle rem.
__ Saline irrig. __ Manual alveol. __ Root tip __ Sinus exposed ___Sutured
Other _____

#16: __MP flap __Vertical release __ Bone window __Elevator __ Forcep __ Follicle rem.
__ Saline irrig. __ Manual alveol. __ Root tip __ Sinus exposed ___Sutured
Other _____

#17: __MPflap__lateral hockey stick __ Bone removal w/ Hall drill, NS __Crown section
__ Root section __Elevator __ Forcep __ Follicle rem (NA) __Follicle adherent lingual
__ Root tip __ Nerve visualized __Saline irrig. __ Sutured
Other ✓ _____

(#32:) ✓ MPflap __lateral hockey stick ✓ Bone removal w/ Hall drill, NS ✓ Crown section
✓ Root section ✓ Elevator ✓ Forcep ✓ Follicle rem (NA) __Follicle adherent lingual
__ Root tip __ Nerve visualized ✓ Saline irrig. ✓ Sutured
Other 3-0 PDS.

ADDITIONAL TEETH #'s: Incisional Biopsy RL. lateral tongue
✓ Throat Screen removed ✓ Gauze count correct ✓ Oral gauze packs placed 4-0
Vicryl.

Complications: ✓ (None) __ Yes, comments:

Post-op instructions reviewed w/ escort/patient ✓
Follow-up: ___ days 1 week ___ prn
Rx: _____

Surgeon: _____ **Assist(s):** _____

Procedure date: 8/19/16

Revised 2/23/11

Mr Thomas C. Lovelace
1971 Knoll Ridge Rd.
York, SC 29745

"TIME OUT"

BUSINESS OFFICE: VERIFY AT CHECK-IN

Patient Name ✓ DOB_____ SS#_____
MM DD YY

SIGNATURE _____ DATE 8/19/16

Date_____ HEART:_____ LUNGS:_____

WT _____ kg _____ lbs BMI _____

ASA: __I ✓II __III __IV Mallampatti__1 ✓2 __3 __4

CLINICAL STAFF: VERIFY IN SURGERY SUITE

CONSENT SIGNED Yes NPO 0001

Patient Name ✓ DOB_____ SS#_____
MM DD YY

PREMED _____

Allergies NKda

SURGICAL TEAM Simpson/Thompson/Evenson

Pregnant no Contact lenses no

INDUCTION/EMERGENCE _____

Procedure Remove lower right wisdom tooth
Biopsy right side of tongue

Beginning Gauge Count: 6 4x4 4 2x2 Int

Ending Gauge Count: 6 4x4 4 2x2 Int

S. Johnson 8/19/16
Assistant Signature / Date

Doctor Signature/ Date

TIME	1053	1130	1205	1225	1240	1245											TOTAL	WASTE
N2O/ O2		3/3	0/6	3/3	0/6	RA												
FENTANYL																		
VERSED																		
KETAMINE																		
PROPOFOL																		
GLYCO-PYROLATE																		
DECADRON																		
SEVOFLURANE																		
BP	172/96																	
PULSE	74																	
SPO2	97																	

RECOVERY

IV FLUIDS: _____

Discharge in care of_____ Relationship_____

BP_____/_____ Pulse_____ SPO2_____ DRESSING CHANGE_____ DISCHARGE TIME_____

VERBAL INSTRUCTIONS___ WRITTEN INSTRUCTIONS ✓ DIET INSTRUCTIONS___ PERSONAL ITEMS RETURNED ✓
(INCLUDING DENTURES)

DISCHARGE CRITERIA

__Normal depth/rate respiration (2)	__Limited breathing/airway (1)	__Airway support (0)
__Moves extremities (2)	__Moves two extremities (1)	__Not able to ambulate (0)
__Alert and oriented (2)	__Aroused by verbal stimuli (1)	__Aroused by physical stimuli (0)
__Normal skin color, dry, warm (2)	__Pale, clammy skin (1)	__Dusky, clammy, nauseas (0)
__BP±20 pts pre-op (2)	__BP± 21-40 pts pre-op (1)	__BP ≥40 pts pre-op (0)

_____Total Score (Must be > 9) Initials Dr:_____ Staff:_____

NOTES

_____

_____

_____

_____

_____ _____
Signature Assistant

DATE 8/19/16

REVISED 5/14

Page 1 of 1

0031 BILLMAN

The Center For Oral & Maxillofacial Surgery, P.A.
372 South Herlong Avenue
Rock Hill, SC 29732-1160
(803) 324-1160

Dr Thomas Simpson, Jr
State License #: 30-SC2826
DEA #: BS1496822
NPI #: 1891774162

Name Thomas Lovelace Age 62

Address 1971 Knoll Ridge Rd. York, SC 29745 Date 8/19/2016

℞ Diflucan 100mg

Quantity: 7

Frequency: 1 QDay

MD, MD — Dispense As Written

MD, MD — Substitution Permitted

SC / CS / 8.1.0.55

The Center For Oral & Maxillofacial Surgery, P.A.
372 South Herlong Avenue
Rock Hill, SC 29732-1160
(803) 324-1160

Dr Thomas Simpson, Jr
State License #: 30-SC2826
DEA #: BS1496822
NPI #: 1891774162

Name Thomas Lovelace Age 62

Address 1971 Knoll Ridge Rd. York, SC 29745 Date 8/19/2016

℞ Percocet10/325

Quantity: 30

Frequency: 1/2 - 1 q4h prn pain. No Refills

MD, MD — Dispense As Written

MD, MD — Substitution Permitted

SC / CS / 8.1.0.55

0032 BILLMAN

PIEDMONT MEDICAL CENTER
DEPARTMENT OF PATHOLOGY

PO

Dr. Craig F. Hart, Pathologist | Dr. Roger W. Stone, Pathologist | Dr. Robert E. Thomas, Jr., Pathologist

PATIENT INFORMATION:

Name Thomas, Lovelace Date 8/19/16

Date of Birth _ Sex M SS# _

Address 1971 Knob Ridge Rd York SC 29745

Telephone # 803-684-0490 Time of Collection _

CLINICAL HISTORY: Ulcerative lesion present ~~on tongue x + year~~

Physician T. H. Simpson

Pre-op Diagnosis Squamous Cell Carcinoma.

PLEASE ATTACH A COPY OF INSURANCE

TISSUE REMOVED:

A) Fungating mass Rt. lateral tongue

B) _

C) _

D) _

E) _

CHECK ONE OF THE FOLLOWING:

- [x] Submitted in formalin
- [ ] Submitted fresh/special handling
  - [x] Frozen section
  - [ ] (Time in formalin for breast tissue _____)
  - [ ] Other

0340-9-K (9/15)

Piedmont Medical Center - EH/SH/Clients
222 S Herlong Ave Rock Hill, SC 29732-

Patient Name: LOVELACE, THOMAS C
MRN: 100000020534
Acct #: 888888888

Department of Pathology

Medical Directors:
Robert E. Thomas Jr., M.D.

Pathology Reports

Collected Date/Time:	Received Date/Time:	Accession:
8/19/2016 09:00 EDT	8/19/2016 12:51 EDT	373-SU-16-007994

SURGICAL PATHOLOGY REPORT – 8/22/2016 14:54 EDT – Auth (Verified)

DIAGNOSIS:

TONGUE, RIGHT LATERAL, BIOPSY
--INVASIVE MODERATELY DIFFERENTIATED KERATINIZING SQUAMOUS CELL CARCINOMA
--INVOLVES MARGINS OF BIOPSY
--P16 NEGATIVE IN TUMOR CELLS

COMMENT: Appropriate controls have been performed.

CRAIG F HART
(Electronic signature)
Signed on: 08/22/2016 14:54 EDT
CFH/CB

SPECIMEN SOURCE:

Right lateral tongue

CLINICAL INFORMATION:

Diagnosis/Clinical Information: Squamous Cell Carcinoma, Ulceration Lesion Present on Tongue for 1 Year
Procedure: Excision of Lesion

GROSS EXAMINATION:

Fungating mass from right lateral tongue. Received are two white soft tissue fragments that measure 1.1 x 0.9 x 0.3 cm and 0.7 x 0.4 x 0.2 cm. The specimens are inked black. The specimens are serially sectioned and submitted in entirety in Block 1.

JS /CB

Report received by:

K. Falls 8.22.16
Date

Reviewed by/Dr:

8/22/16
Date

Ordering: SIMPSON JR DMD,THOMAS
Admitting:
Consulting:

Copy to: SIMPSON JR DMD,THOMAS
Printed: 8/22/2016 16:03 EDT
Report Request ID: 69312510

Patient Name: LOVELACE, THOMAS C
MRN: 100000020534
Acct #: 888888888
DOB/Age/Sex: / 62 years / Male
Location: PMC - York Path
Admitted: 8/19/2016 Discharge:

Piedmont Medical Center - EH/SH/Clients

222 S Herlong Ave Rock Hill, SC 29732-

Patient Name: LOVELACE, THOMAS C
MRN: 100000020534
Acct #: 888888888

Department of Pathology

Medical Directors:
Robert E. Thomas Jr., M.D.

Pathology Reports

Collected Date/Time:
8/19/2016 09:00 EDT

Received Date/Time:
8/19/2016 12:51 EDT

Accession:
373-SU-16-007994

PMC Tier
CPT/HCPCS code
88305
88342

Ordering: SIMPSON JR DMD,THOMAS
Admitting:
Consulting:

Copy to: SIMPSON JR DMD,THOMAS
Printed: 8/22/2016 16:03 EDT
Report Request ID: 69312510

Patient Name: LOVELACE, THOMAS C
MRN: 100000020534
Acct #: 888888888
DOB/Age/Sex: / 62 years / Male
Location: PMC - York Path
Admitted: 8/19/2016 Discharge:

Lovelace, Thomas 104378

~~08/13/2015~~

PROGRESS NOTES

ACCOUNT NUMBER

DATE	NOTES
8/25/16	No Comp. Tongue biopsy positive for squamous cell carcinoma. Pt informed. Will refer to Charlotte ENT for eval. and treatment.

The Center
For Oral & Maxillofacial
Surgery, P.A.

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MARJORIE J. RISSER, D.M.D.
MARK T. BILLMAN, D.M.D., M.D.
RHONDA G. CARTER, D.D.S.
DIPLOMATES, AMERICAN BOARD OF
ORAL AND MAXILLOFACIAL SURGERY

August 19, 2016

Dr. Rob Renner
PO Box 712
York, SC 29745

Re: Thomas C. Lovelace
DOB:

Dear Dr. Renner:

I would like to take the opportunity to thank you for referring Thomas Lovelace to our office. He was seen in our office and the following procedures were performed:

Excision lesion with simple repair / diameter 0.6 to 1.0 cm
Extraction of tooth #32

Mr Lovelace will be in touch with our office for normal post-operative care. Thank you again, Dr. Renner, for the confidence you have shown in me.

Sincerely,

Thomas H Simpson, Jr, DMD, MD

Dr. Renner,
The tongue lesion is unfortunately Squamous Cell Cancer. I will refer Mr. Lovelace to Charlotte ENT for further eval. and treatment.

Thanks,

372 S. HERLONG AVE. • ROCK HILL, S.C. 29732
(803) 324-1180 • FAX (803) 324-2458

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ORAL AND MAXILLOFACIAL SURGERY

August 31, 2016

Gregory Parsons, M.D.
838 W. Meeting Street, Suite C
Lancaster, SC 29720

RE: Thomas Lovelace
DOB:

Dear Greg:

I am referring Mr. Thomas Lovelace to you for evaluation and treatment of squamous cell cancer of the right lateral tongue. Mr. Thomas had been seen by Dr. Mark Billman in May 2015 for a small ulcer on the right side of his tongue and adjacent tooth #32. This was felt to be traumatic and Mark had recommended removal of tooth #32. The patient did not return for followup as he felt that the ulcer and pain had resolved. The patient stated the ulcer recurred approximately 4-5 months ago and did not heal, so he returned for re-evaluation. Mark recommended for removal of tooth #32 and biopsy of the tongue. Mr. Lovelace saw me for biopsy and extraction. At that time, I noted an approximately 1 x 1 cm hemorrhagic ulcerative area of the posterior right lateral border of the tongue and extensive area of leukoplakia on the ventral surface of the right tongue anterior to that. Biopsy proved this to be squamous cell carcinoma.

I appreciate your help and evaluate and treating Mr. Loveless. Please contact me if I can provide any further information.

Sincerely yours,

Thomas H. Simpson, Jr., D.M.D., M.D.

THS:cbs/ls

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Progress Note

Date: **September 7, 2016**

Patient: **Thomas Lovelace** PID: **104378** DOB: Sex: **Male**

Rock Hill Radiation Therapy (Diana) called asking for clearance for radiation on patient's mouth. Our last panorex was from 2011. They need to know about additional decayed teeth, etc. I scheduled patient for consult/exam per Maria.

Diana's #: 366-5186
Fax # to fax exam notes: 366-5730

CG
3:15pm

Dr. McCammon, Robert
Renner, Rob.

Lovelace, Thomas 104378
Birth:
Ref by: Dr. Rob Renner

EXAMINATION FORM

9-8-16.

Patient Name (Number) DOB Date

BP: 158 100 **Pulse:** 89 **SpO2:** 98 **Weight:** 117. kg 258 lbs **Height:** 60" **BMI:** 35%
CC: __pain __swelling __infection ✓refered for eval
Pt referred for dental for ext's prior to Radiation tx.
Pertinent PMH: ✓none __DM __HTN __Asthma __OSAS
Meds: None
Allergies: NKDA
Pertinent FMH/ SHX: ✓none
TMJ Symptoms: Y (N)
Objective: No active decay or infection. No perio dz.

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L
	X	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

R		A	B	C	D	E	F	G	H	I	J		L
		T	S	R	Q	P	O	N	M	L	K		

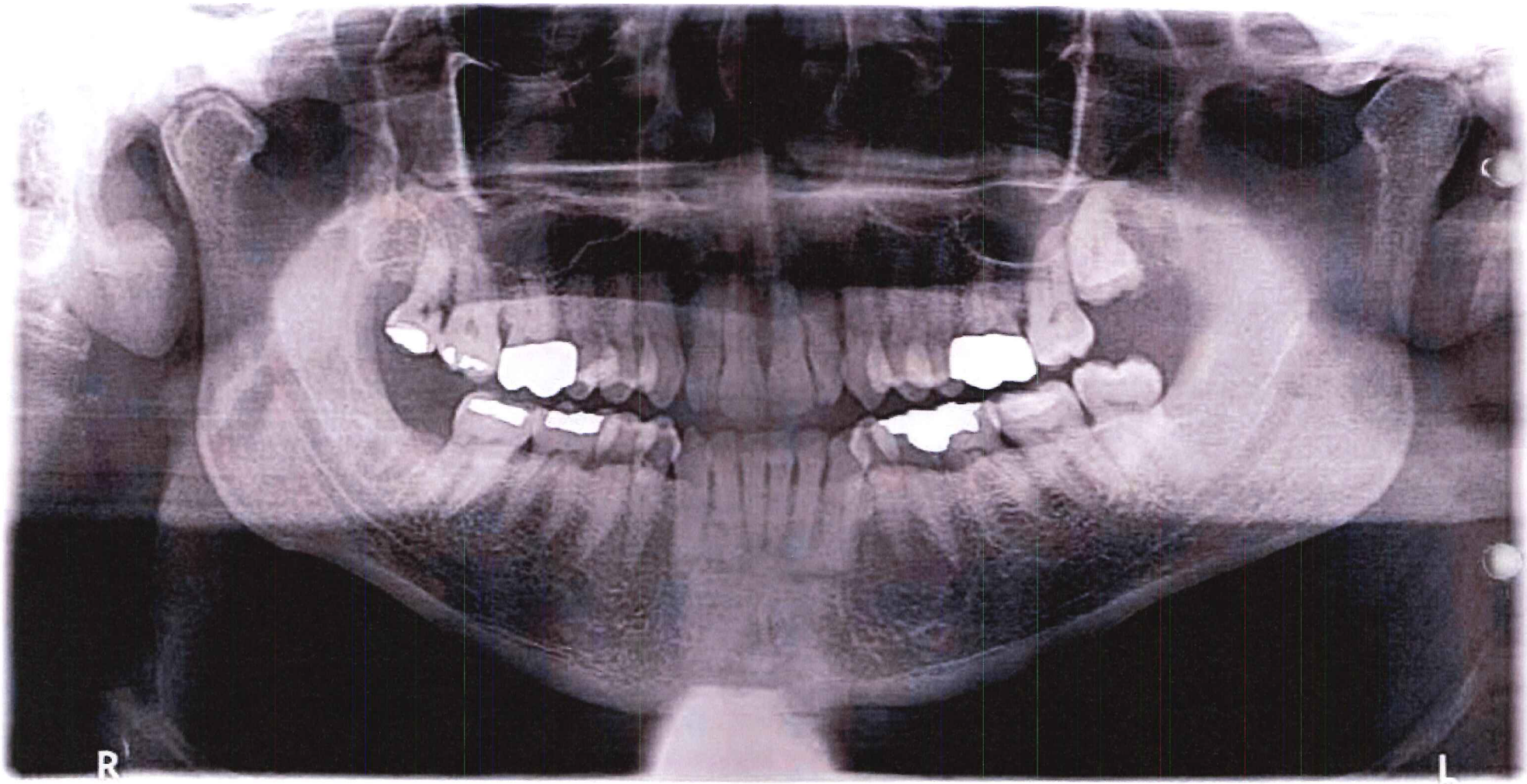
X=missing / =decayed -- =nonrestorable ^=impacted O=painful

Tori / Alveolar irreg: Area: Biopsy site healing well.
Soft Tissue __WNL Other:
Remaining oral exam: ✓WNL Other:
TMJ: clicking? ✓No __Yes, pain? ✓No __Yes, decreased opening? ✓No __Yes
Other:
Perio Status: ✓Good __Gingivitis __Recession __Periodontitis

Panorex:
Right condyle: ✓WNL, Left condyle: ✓WNL, Right antrum: ✓WNL
Left antrum: ✓WNL, Other findings:
Other Radiograph:
Dx: Dentition in good repair. No decay. No perio dz. Pt OK to keep all teeth prior to Rad. Tx.
ASA: ✓I __II __III __IV **MALLAMPATTI:** __1 ✓2 __3 __4
PLAN: ___Local ___N_2O ___IV Sedation: __minimal__moderate__ Deep___GA ___OR
Removal of teeth #
Other
Reason for IV sedation:
Consent form reviewed: Y N **Special risks discussed:** Will send ltrs to Dr. McCammon and Dr. Renner.
Rx:

Surgeon:
Exam Date: 9/8/16

Revised 5/14



208

0041 **BILLMAN**

Pan Full DR

OFFICE ROUTING SLIP

DATE: DIAGNOSIS:

Lovelace, Thomas 104378
09/08/2016

99202	OVNP1	87
99203	OVNP 2	142
99222	H&P (In-patient)	247
99204	H&P (Out-patient)	210
99211	OVEP 1	53
99212	OVEP 2	74
70355	X-RAY, PANOREX	105
70300	X-RAY, PA 1ST	40
70300	X-RAY, PA EACH ADDITIONAL	18
**A4550	SURGICAL TRAY	80
**D7111	REMOVAL CORONAL REMNANT DECIDUOUS TOOTH #	95
D7140	EXT. ERUPTED TOOTH OR EXPOSED ROOT #	140
D7250	SR RESIDUAL TOOTH ROOT#	250
D7210	SR ERUPTED TOOTH #	235
D7220	SR IMP. TOOTH, TISSUE #	290
D7230	SR IMP. TOOTH, PARTIAL BONY #	380
D7240	SR IMP. TOOTH, COMPLETE BONY OR BONY SEC #	450
D7241	SR IMP. TOOTH, DIFFICULT #	547
D7280	SURGICAL EXPOSURE OF IMPACT TOOTH TO FACILITATE ERUPTION #	468
**D7283	PLACEMENT OF DEVISE TO FACILITATE ERUPTION #	122
D7282	LUXATE TOOTH TO FACILITATE ERUPTION #	
**D7311	AVELOPLASTY W/ EXT X ____QUAD @ 275 (CIRCLE UR UL LR LL)	____
**D7321	AVELOPLASTY W/O EXT X___QUAD@ 510 (CIRCLE: UR UL LR LL)	____
**21029	REMOVE LATERAL EXOSTOSES CIRCLE: UR UL LR LL	830
**21031	REMOVE MANDIBULAR TORUS CIRCLE: LR LL	940
**21032	REMOVE PALATAL TORUS CIRCLE: UR UL	1,000
**41822	REMOVE FIBROUS TUBEROSITY CIRCLE: UR UL LR LL	370
**41823	REMOVE OSSEOUS TUBEROSITY CIRCLE: UR UL LR LL	710

**MEDICAID WILL NOT PAY

**41520	FRENOPLASTY, LINGUAL	715
**40819	FRENUM,EXCISE,LABIAL/BUCCAL	600
41008	I&D, SUBMAND., INTRAORAL	740
41009	I&D, BUCCAL/CANINE INTRAORAL TOOTH #	740
41017	EXTRAORAL I&D, SUBMAND.	780
41018	EXTRAORAL I&D, MASTICATOR SPACE	800

IMPLANTS & GRAFTING

**21248	IMPLANT, CYL X ____ @ $2000 each = TOOTH #	
21208	BONE GRAFT AUGMENTATION I.E. SINUS LIFT; ONLAY GRAFT	2,000
70486	CT SCAN	375
D0470	IMPRESSION /MODEL	120
D4266	GUIDED TISSUE REGEN RESORBABLE MEMBRANE	
D4267	GUIDED TISSUE REGEN NON-RESORBABLE MEMBRANE	
86965	PRP/ PRF PLATELET RICH PLASMA/FIBRIN	

LESIONS & BIOPSIES

11100	BIOPSY	315
11441	BIOPSY .6-1cm	435
40812	EXCISE VESTIBULAR LESION, MUCOSA, SUBMUCOSA	575
40814	EXCISE VESTIBULAR LESION, COMPLEX	890
40816	EXCISE VESTIBULAR LESION, COMPLEX, WITH MUSCLE	1,200
41112	EXCISE TONGUE LESION, ANTERIOR 2/3	600
41113	EXCISE TONGUE LESION, POSTERIOR 1/3	750

ANESTHESIA

D9223	GENERAL ANESTHESIA ____ UNITS (15 MINS PER) X $200 =	____
D9243	IV SEDATION ____ UNITS (15 MINS PER) X $180 =	____
D9230	NITROUS OXIDE ANALGESIA	85
D9248	NON IV SEDATION (MASK)	280

TOTAL FEE TODAY'S VISIT

AMOUNT PAID TODAY

TOTAL SURGERY FEE

SURGERY DEPOSIT

DEPOSIT PAID

Doctor's notes:

☐ Diabetes ☐ Immediate denture ☐ Blood pressure
☐ Coumadin Other_____

☐ 30 min ☐ 45 min ☐ _____

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September 9, 2016

Dr. Robert McCammon
Rock Hill Radiation Therapy Center
228 S Herlong Avenue
Rock Hill, SC 29732

RE: Thomas Lovelace
DOB:

Dear Dr. McCammon:

I had the opportunity to evaluate Mr. Lovelace on September 8, 2016 for indicated dental treatment prior to beginning radiation therapy. I performed a new panoramic radiograph and a comprehensive oral exam on Mr. Lovelace. Although, Mr. Lovelace has posterior dentition, which will be in the field of radiation in the right posterior mandible, all of his dentition is in excellent dental repair with no active cavities or evidence of active infection. He has no periodontal disease and is in general excellent dental health. The biopsy site on the right lateral tongue is healing well in the site of his cancer.

Based on Mr. Lovelace's clinical and radiographic findings, I feel that he does not need to have any of his dentition extracted prior to radiation treatment and that it can be maintained with aggressive routine dental care and routine fluoride treatments of the dentition. I discussed at length with Mr. Lovelace the need for meticulous oral care, hygiene, and frequent dental visits. I also informed him that if he developed the need for removal of mandibular posterior teeth on the right in the future, he would require hyperbaric oxygen therapy prior to removal of these teeth. Mr. Lovelace indicates understanding and desires to maintain his dentition. It is my opinion that he can begin radiation treatment of his oral cancer without delay from a dental standpoint. I will send a copy of this letter to his dentist Dr. Rob Renner so he can adjust Mr. Lovelace's future dental treatment accordingly.

Please contact me if you have any questions concerning my evaluation.

Sincerely yours,

Thomas H. Simpson, Jr., D.M.D., M.D.

THS:cbs/ls

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Lovelace, Thomas 104
05/13/2015
The Center For Oral &

Lovelace, Thomas 104378
08/17/2016
The Center For Oral &

P

DATE	MEDICATION / DIRECTION QUANTITY	PHARMACY # IF CALLED IN	DR.	INITIAL CALLED IN
5/13/15	Perioday Mouthrinse 1 Bottle			
8/17/16	Amoxicillin 875mg (30) Please			

Patient Notes Master

FOR

THOMAS C. LOVELACE

Date Entered	Format	Type	Tooth	Status	User	
11/03/14 12:00 AM	Text	Prim Closed		Verified	Patricia Davidson	This note has not been modified
Prim Insurance Claim From October 22, 2014 was closed.						
4/13/15 11:48 AM	Text	Recall		Verified	Dana Redmon	This note has not been modified
Recall Processed on Laser Postcard						
4/30/15 8:50 AM	Text	Account		Verified	Amy Stockman	This note has not been modified
Eligibility Benefit Information checked for THOMAS LOVELACE on METLIFE DENTAL Payer ID:65978. (9333)						
4/30/15 9:06 AM	Text	General		Verified	Dana Redmon	This note has not been modified
Updated Patient Medical History						
4/30/15 9:53 AM	Text	General		Verified	Dana Redmon	This note has not been modified
p. exam , a. prophy , (reviewed by Dr Renner) mhr- no changes per pt , eie- pt bit tongue 5 weeks ago and still has pain (in area of #3) sent him to The Center to have them biopsy 4x3 mm area. , perio charting , pt had light calc. mandibular anterior , pt needs no restorations at this time. rjr/dkr na: 6 m r/c						
5/04/15 5:18 PM	Text	Prim Submission		Verified	Patricia Davidson	This note has not been modified
Insurance Claim from April 30, 2015 was Submitted to Prim. Insurance Company: METLIFE DENTAL, Payer ID: 65978						
5/19/15 12:04 PM	Text	Account		Verified	Patricia Davidson	This note has not been modified
$50.00 applied to 2015 deductible and then remaining balance paid at 80% for date of service 4-30-2015. We have employer and insurance in the computer wrong.						
5/19/15 12:06 PM	Text	Prim Closed		Verified	Patricia Davidson	This note has not been modified
Prim Insurance Claim from April 30, 2015 was closed.						
6/17/15 3:39 PM	Text	Statement		Verified	Debra Dawkins	This note has not been modified
Statement Processed With Message `Your Account is 30 days Overdue, Please Pay Promptly.` Included.						
10/14/15 9:32 AM	Text	Recall		Verified	Dana Redmon	This note has not been modified
Recall Processed on Laser Postcard						
11/09/15 2:00 PM	Text	Account		Verified	Amy Stockman	This note has not been modified
Eligibility Benefit Information checked for THOMAS LOVELACE on METLIFE DENTAL Payer ID:65978. (11148)						
11/11/15 10:10 AM	Text	General		Verified	Lisa Smith	This note has not been modified
Updated Patient Medical History						
11/11/15 12:46 PM	Text	Chart		Verified	Lisa Smith	This note has not been modified
P. EXAM, ADULT PROPHY, MHR WITH PT. EIE-NSF, PERIO CHARTING, OHI. DENTAL CONCERNS: MODERATE GENRALIZED STAIN AND CALCULUS. USED CAVITRON. REVIEWED FLOSSING POSTERIOR AREAS. PT SAW DR BILLMAN FOR ULCERATED AREA ON HIS TONGUE. THERE IS A LETTER IN SMART DOC. AFTER DISCUSSING OS VISIT, PT WOULD LIKE DR GREINER TO ADJUST THE OCCLUSION AT LINGUAL AREA OF #32. NO OTHER TX RECOMMENED AT THIS TIME. LS/DR GREINER NV: OCC ADJ OF #32 LINGUAL AREA...NOV 18 NV: 6 MONTH...MAY 24						
11/12/15 3:57 PM	Text	Prim Submission		Verified	Amy Stockman	This note has not been modified
Insurance Claim from November 11, 2015 was Submitted to Prim. Insurance Company: METLIFE DENTAL, Payer ID: 65978						

Patient Notes Master
FOR
THOMAS C. LOVELACE

Date Entered	Format	Type	Tooth	Status	User	
11/18/15 10:00 AM	Text	Chart		Verified	Courtney Sexton	This note has not been modified

Pt presents today for ooc adju. of #32.
He stated that there is a sharp spot on this tooth that needs to be polished bc it is cutting his tongue up.
Checked OCC. adjusted #32- L.
Pt tolerated procedure very well.
NV: 6 month recall. GHG/CS

11/19/15 3:56 PM	Text	Prim Submission		Verified	Patricia Davidson	This note has not been modified

Insurance Claim from November 18, 2015 was Submitted to Prim. Insurance Company: METLIFE DENTAL, Payer ID: 65978

11/24/15 2:27 PM	Text	Prim Closed		Verified	Patricia Davidson	This note has not been modified

Prim Insurance Claim from November 11, 2015 was closed.

11/30/15 4:25 PM	Text	Account		Verified	Patricia Davidson	This note has not been modified

Insurance denied payment for exam on 11-18-2015 due to not a covered expense. This denial scanned in smart doc.

11/30/15 4:25 PM	Text	Prim Closed		Verified	Patricia Davidson	This note has not been modified

Prim Insurance Claim from November 18, 2015 was closed.

12/15/15 12:33 PM	Text	Statement		Verified	Debra Dawkins	This note has not been modified

Statement Processed With Message `Your Account is 30 days Overdue, Please Pay Promptly.` Included.

5/02/16 10:21 AM	Text	Recall		Verified	Dana Redmon	This note has not been modified

Recall Processed on Laser Postcard

6/08/16 2:16 PM	Text	General		Verified	Amy Stockman	This note has not been modified

called pt and lm offering R/C appts on 6/9/2016. asked pt to cb if interested

6/16/16 11:08 AM	Text	Account		Verified	Patricia Davidson	This note has not been modified

called pt and offered 6/9/2016

7/07/16 1:34 PM	Text	Rx Writer		Verified	Amy Stockman	This note has not been modified

Amy Perlow, DMD; Peridex 0.12%; 1 bottle; 0 refills

7/07/16 3:36 PM	Text	General		Verified	Amy Stockman	This note has not been modified

PT CAME IN AND WANTED TO KNOW IF DR. P WOULD WRITE HIM A REFILL FOR PERIDEX. DR P OK'D IT, GAVE RX TO PT

8/11/16 8:50 AM	Text	Account		Verified	Amy Stockman	This note has not been modified

Eligibility Benefit Information checked for THOMAS LOVELACE on METLIFE DENTAL Payer ID:65978. (13738)

8/11/16 9:20 AM	Text	Chart	32	Verified	Robert J. Renner, DDS	This note has not been modified

Tom has another sore area lateral border of tongue in area opposing tooth 32. He was told by oral sx that this was trauma related. Lesion looks suspicious. I advised him to have tooth 32 ext and we will monitor the healing. He is of agreement and would like to proceed with this approach. Referral was given to Center for this. RR

8/15/16 5:48 PM	Text	Prim Submission		Verified	Patricia Davidson	This note has not been modified

Insurance Claim from August 11, 2016 was Submitted to Prim. Insurance Company: METLIFE DENTAL, Payer ID: 65978

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Ft mill 1130 13th

☐ Marjorie J. Risser, D.M.D.
☐ Rhonda G. Carter, D.D.S.
☒ Thomas H. Simpson, Jr., D.M.D., M.D.
☐ Mark T. Billman, D.M.D., M.D.

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laoms@comporium.net

Today's Date 4-30-15

Patient's Name Tom Lovelace Phone ( )

Appointment Date and Time _____

Referred by Dr. Rob Renner DDS

Referring Dr.'s Phone No. (803) 684-2366

For Examination of: right side of tongue

Remarks _____

Radiographs included? ☐ Yes ☐ No

Patients can go online and register ahead of time at www.thecenterforoms.com.

Thank you for choosing our practice to provide your care. In order to adequately evaluate your medical and dental needs and properly plan our surgical procedure, we require that all patients have an examination and consultation performed in our office at least 24 hours prior to your surgery.

(Maps on Reverse Side)

PF 112

Lovelace, Thomas 104378
Birth: 07/09/1954
Ref by: Dr. Rob Renner

EXAMINATION FORM

Patient Name (Number) DOB 7/9/54 Date 5-13-15

BP: 184 / 104 **Pulse:** 77 **SpO2:** 98% **Weight:** 129 kg 284 lbs **Height:** 6'0 **BMI:** 39.2
CC: __pain __swelling __infection ✓refered for eval
Buccal Swelling - Non Healing
Pertinent PMH: ✓none __DM __HTN __Asthma __OSAS

Meds: ϕ
Allergies: NKDA
Pertinent FMH/ SHX: __none use cocaine 2 yrs - 12 yrs
TMJ Symptoms: Y N
Objective:

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	X	L
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	
R				A	B	C	D	E	F	G	H	I	J				L
				T	S	R	Q	P	O	N	M	L	K				

X=missing / =decayed -- =nonrestorable ^=impacted O=painful

Tori / Alveolar irreg: Area: (B) mand (buccal) #32
Soft Tissue __WNL Other: (B) Lt Buccal tissue irregular - Traumatic
Remaining oral exam: __WNL Other:
TMJ: clicking? __No __Yes, pain? __No __Yes, decreased opening? __No __Yes
Other:
Perio Status: __Good __Gingivitis __Recession __Periodontitis

Panorex:
Right condyle: ___WNL, Left condyle: ___WNL, Right antrum: ___WNL
Left antrum: ___WNL, Other findings:
Other Radiograph:

Dx: Torus-buccal
ASA: __I __II __III __IV **MALLAMPATTI:** __1 __2 __3 __4
PLAN: ___Local ___N_2O ___IV Sedation: __minimal__moderate__ Deep___GA ___OR
Removal of teeth #
Other
Reason for IV sedation:
Consent form reviewed: Y N **Special risks discussed:**

Rx: per Lov

Lov DNS to consider
Resection Torus #32

Surgeon:

Exam Date: 5/13/15

Revised 5/14

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For Oral & Maxillofacial Surgery, P.A.

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RHONDA G. CARTER, D.D.S.
DIPLOMATES AMERICAN BOARD OF
ORAL AND MAXILLOFACIAL SURGERY

Date: May 13, 2015

Dear Dr, Rob Renner,

Re: Thomas Lovelace

This report is sent so that you may have a record in your files for Thomas Lovelace

Date of Treatment:

Diagnosis:

RIGHT LATERAL BORDER TONGUE ULCERATION (TRAUMA)

Comments:

THANK YOU FOR REFERRING MR. LOVELACE. I FEEL THE LESION IS FROM MALPOSITIONED #32. REMOVAL MAY HELP, BUT I ALSO DISCUSSED EXTRACTION WITH MR LOVELACE. HE IS TO DISCUSS THESE OPTIONS WITH YOU.

THANKS AGAIN

MARK

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YORK DENTAL GROUP

PO BOX 712/553 E. ALEXANDER LOVE HWY

YORK, SOUTH CAROLINA 29745

803-684-2366 – 803-684-9101-FAX

Dr. Billman

1698 SC – 160

Fort Mill, SC 29715

803-802-7700

We are referring Tom Lovelace for ext of #32.

If you need any other information, please call.

Thank you!

York Dental Group

Dr. Robert J. Renner, DDS, FAGD

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
THOMAS LOVELACE and CAROL LOVELACE,	)	**C/A No.: 2019-CP-46-01736**
Plaintiffs,	)	
v.	)	
The Center for Oral and Maxillofacial Surgery, P.A. and Mark Billman, DMD, MD,	)	**Plaintiffs' Motion in Limine to Exclude History of Smoking and Alcohol Consumption**
Defendants.	)	

Plaintiffs, by and through undersigned counsel, move before this court to exclude any evidence surrounding Tom Lovelace's smoking history and history of alcohol consumption pursuant to rules 401 and 403 of the South Carolina Rules of Evidence.

Rule 401 provides for admissibility of relevant evidence and defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of an action more probable or less probable that it would be without the evidence."

Mr. Lovelace testified in his deposition that he smoked in the distant past. He testified that he quit smoking entirely in 2002. He also testified he consumes one alcoholic beverage in the evenings. No expert witness in this case will offer any testimony that smoking or drinking was a probable cause of Mr. Lovelace's tongue cancer, that either impacted the development of his cancer, or that either impacted the treatment for his cancer. Evidence of Mr. Lovelace's smoking history and history of alcohol consumption is not relevant in this case as neither make any more or less probable any issue to be decided by the jury. This lawsuit alleges the Defendant failed to biopsy and follow up on a tongue lesion in 2015 when it would have been an early stage

of a tongue cancer or a pre-cancerous condition. That failure to biopsy and follow up on the tongue lesion robbed Mr. Lovelace of a non-invasive cure. It allowed the lesion to grow and develop un-checked for 15 months and resulted in a Stage III tongue cancer which required multiple tongue surgeries and reconstruction as well as extensive chemotherapy and radiation. No witness named by either party will testify that Mr. Lovelace's decades old smoking or history of alcohol consumption in any way exacerbated the development of the cancer after the initial failure to diagnosis the cancer.

Other courts have addressed the admissibility of smoking. In *Weistock v. Midwestern Regional Medical Center*, 2010 U.S. Dist. LEXIS 39935, (USDC N. D. Ill.) (2010). Plaintiffs alleged the chemotherapy administered to the decedent exacerbated his lung cancer diagnosis, causing his death. Plaintiff's moved in limine to prevent any evidence of the decedent's smoking history. Defendants provided expert testimony that decedent's smoking history contributed to his lung cancer but also contributed to other health conditions that lead to his death including cardiac disease and respiratory disease.

In denying the Plaintiff's motion, the trial court held:

> The focus of this litigation is on whether the chemotherapy treatment Mr. Weistock received with the Defendants caused Mr. Weistock's injuries and death. Smoking evidence may be relevant to negate causation or to negate or reduce damages, but **Defendants cannot introduce evidence of Mr. Weistock's smoking history without showing a causal connection between Mr. Weistock's smoking and his condition and death.**

(emphasis added)

The trial court's decision to admit evidence of decedent's smoking was allowed only because Defendant elicited testimony from his expert witness causally relating decedent's

smoking to decedent's death.. *Weistock v. Midwestern Ref'l Med. Ctr.*, 2010 U.S. Dist. LEXIS 39935, 5 (2010).

Similarly, in *Lagestee v. Days Inn Management Co*., 303 Ill.App.3d 935, 709 NE.2d 270 (Ill. App. 1999), the Illinois Appellate Court reversed the trial court's admission of evidence of the plaintiff's smoking because defendants offered no relevant evidence of a causal connection between the plaintiff's smoking and his L5-S1 disk herniation, the injury for which the plaintiff was seeking compensation.

In this case no expert witness will testify that Tom Lovelace's history of smoking decades ago caused his tongue cancer, exacerbated the development of his tongue cancer, or effected his treatment. Nor will any expert testify that Tom's survival prognosis would have been any different based on his history of smoking. In this case, smoking did not contribute to Mr. Lovelace's damages. Rather, Mr. Lovelace's extensive treatment for his cancer would not have been necessary but for a failure of the Defendant to biopsy and follow up on the visible tongue lesion. Tom's smoking history is irrelevant as it does not prove or disprove any issue that is material to this litigation.

Courts have applied the same logic in determining the admissibility of evidence pertaining to alcohol use in medical malpractice cases. In *Galayda v. Lake Hospital System*, 993 Ohio App. LEXIS 4699, 1993 WL 389754 (Ct. App. 1993) the plaintiff was involved in a motor vehicle wreck which caused him to be hospitalized and require surgery. The lawsuit arose out of the negligent care and treatment plaintiff received while hospitalized. Defendants sought to offer evidence that plaintiff was intoxicated at the time of the motor vehicle wreck. The Ohio Court of Appeals affirmed the trial court's ruling that the evidence of alcohol consumption was not relevant to any fact in the case by stating:

> The evidence attempted to be introduced by appellants pertaining to alcohol consumption is not relevant to any issues in this case. **The testimony proffered at trial failed to support appellants' strained connection between Galayda's alleged alcohol consumption, accorded long-term use status by appellants, and his injuries.** The evidence thus has no tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence and thus was excludable under *Evid.R. 401, 402.*

Galayda v. Lake Hosp. Sys., 1993 Ohio App. LEXIS 4699, 1993 WL 389754 (Ct. App. 1993) (emphasis added).

Conversely, in *McGee v. Sebring*, the Court of Appeals of Minnesota affirmed the trial court's ruling to admit evidence of plaintiff's alcohol consumption in a medical malpractice case. However, the court admitted this evidence because there was expert testimony linking plaintiff's injuries to his alcohol consumption. *McGee v. Sebring*, 2006 Minn. App. Unpub. LEXIS 860, 2006 WL 2256188 (Ct. App. 2006).

In this case, no expert will offer an opinion that Mr. Lovelace's history of alcohol consumption in any way caused his tongue cancer, exacerbated the development of his tongue cancer, impacted his treatment for tongue cancer, or affected his life expectancy. Again, any evidence of alcohol consumption does not prove or disprove any factual issue in the case that must be resolved by a jury. It is irrelevant.

Additionally, the admission of alcohol consumption or long-ago history of smoking of Mr. Lovelace is unduly prejudicial. The reality is that jurors may unfairly blame Mr. Lovelace for the development of his own tongue cancer. As stated above, the cause of the tongue cancer has no relevance to what the jury will be asked to decide in this case. The only questions for the jury are whether the Defendant was negligent in failing to biopsy and follow up on the tongue lesion and whether that failure was a proximate cause of Mr. Lovelace's Stage III tongue cancer.

Rule 403 of the South Carolina Rules of Evidence excludes evidence when that evidence's prejudicial effect substantially outweighs its probative value. "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." *State v. Gilchrist*, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998). There is no probative value in introducing Mr. Lovelace's alcohol consumption or smoking to the jury, specifically because there is no evidence that will be presented to discuss the effect, or lack thereof, of smoking or alcohol consumption on Mr. Lovelace's tongue cancer. Conversely, presentation of this evidence to the jury suggests a decision on an improper basis, making it unfairly prejudicial as defined in *State v. Gilchrist*.

It should be noted that various records have been introduced as trial exhibits during three video depositions to be published at trial, including Dr. Daniel Brickman, Dr. Robert McCammon, and Dr. David Fisher. None of the witnesses discussed Tom's smoking or drinking history. If the Court sustains Plaintiffs' motion in limine to exclude smoking and drinking history, Plaintiffs requests those histories be redacted from the exhibits that accompanied the depositions.

Based on the foregoing, Plaintiffs respectfully request this Court exclude any evidence regarding Mr. Lovelace's history of alcohol consumption and smoking.

[Signature appears on the following page.]

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York, South Carolina

This 21st day of October 2020.

STATE OF SOUTH CAROLINA.

----------x

THOMAS LOVELACE, ET AL

Plaintiffs,

Case No.

-against- 2019-CP-46-01736

THE CENTER FOR ORAL AND MAXILLOFACIAL SURGERY, PA, ET AL,

Defendants.

----------x

November 4, 2020

York, S.C.

B E F O R E:

HONORABLE WILLIAM MCKINNON.

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THEILE B. MCVEY, Esquire

Attorney for the Plaintiffs

Richardson, Plowden & Robinson, P. A.

MARIAN SCALISE, Esquire

LYDIA L. MAGEE, Esquire

done. No one is questioning that he did have sufficient injures.

MS. MCVEY: As a result of negligence. So we will tie that all in together.

THE COURT: Number nine gets back to the issue I'd taken under advisement. I will think about that. Okay. And then I also had the pro hac motion. I have still not heard anything from the Supreme Court.

MS. SCALISE: Judge Hall has already allowed that. So he's entered it.

THE COURT: Okay. All right. Did it just get referred to him electronically?

MS. SCALISE: I have no idea. We got an order from him kind of after you said you were waiting and then we got an order admitting him pro hac vice.

THE COURT: Okay. Miss Scalise, I believe that is all your pending motions. Have I missed anything?

MS. SCALISE: I don't believe so.

THE COURT: Okay. The first one I have from the plaintiff is to exclude evidence of plaintiff's drinking and smoking. I will say this one, I'm inclined to grant, but I will be happy to hear from you. And the courts reasoning is the smoking stopped in 2002, is that correct?

MS. MCVEY: Yes, sir.

Lovelace, Thomas 104378
Birth: 07/09/1954
Ref by: Dr. Rob Renner

EXAMINATION FORM

7/9/54 5-13-15
Patient Name (Number) DOB Date

BP: 184 / 180 **Pulse:** 77 **SpO2:** 98% **Weight:** 129 kg 284 lbs **Height:** 6'0 **BMI:** 39?
CC: __pain __swelling __infection √refered for eval
Bilateral - Lancing - Dr. Renner
Pertinent PMH: √none __DM __HTN __Asthma __OSAS

Meds: ϕ
Allergies: NKDA
Pertinent FMH/ SHX: __none occ EtOH QTOB - 12yrs
TMJ Symptoms: Y N
Objective:

R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	X	L
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	
R				A	B	C	D	E	F	G	H	I	J				L
				T	S	R	Q	P	O	N	M	L	K				

X=missing /=decayed -- =nonrestorable ^=impacted O=painful

Tori / Alveolar irreg: Area: (B) mand (bilat) #32
Soft Tissue __WNL Other: (R) lat buccal tissue irritation - Traumatic
Remaining oral exam: __WNL Other:
TMJ: clicking? __No __Yes, pain? __No __Yes, decreased opening? __No __Yes
Other:
Perio Status: __Good __Gingivitis __Recession __Periodontitis

Panorex:
Right condyle: ___WNL, Left condyle: ___WNL, Right antrum: ___WNL
Left antrum: ___WNL, Other findings:
Other Radiograph:

Dx: Torus-Irritation
ASA: __I __II __III __IV **MALLAMPATTI:** __1 __2 __3 __4
PLAN: ___Local ___N_2O ___IV Sedation: __minimal__moderate__ Deep___GA ___OR
Removal of teeth #

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 1, 2022

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