DE-IDENTIFIED PRE-TRIAL DEPOSITION TESTIMONY OF A DENTIST IN A FAILURE TO DIAGNOSE DENTAL DECAY CASE

SUPREME COURT OF THE STATE OF NEW

COUNTY OF

- -x

and ,

Plaintiffs,

-against-

,

Defendant.

Index No.:
- -x

August
10:12 a.m.

EXAMINATION BEFORE TRIAL of

, , the Defendant in the above-entitled action, held at the above time and place, taken before , a Notary Public of the State of New , pursuant to Court Order and stipulations between Counsel.

* * *

APPEARANCES:

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Attorneys for Defendant

BY:

* * *

STIPULATIONS

IT IS HEREBY STIPULATED, by and between the attorneys for the respective parties hereto, that:

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R., and shall be controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

MR. OGINSKI: Can you mark the chart as Exhibit 1.

[Whereupon, the chart was hereby marked as Plaintiff's Exhibit 1 for identification, as of this date, by the reporter.]

, the witness herein, having first been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. OGINSKI:

Q. State your name for the record, please.

A. .

Q. What is your address?

A.

Q. Good morning, Doctor.

A. Good morning.

Q. What is a treatment plan?

A. What is a treatment plan, a proposal of the work you plan on doing for

a patient to treat whatever condition is necessary or asked for.

Q. When do you formulate a treatment plan?

A. When? At the initial visit or subsequent visit, if there's further information I might need from a specialist.

Q. What's the purpose of formulating a treatment plan at the initial visit?

A. To decide what path of treatment you're going to proceed with.

Q. How do you formulate a treatment plan?

A. Try and -- examine the patient and try to determine what work, dental work he would need, proceed accordingly.

Q. Once you perform your dental -- your examination and you formulate in your mind about what treatment the patient needs, do you typically have a discussion with the patient about --

A. Yes.

Q. -- what you believe they should

have?

A. Yes.

Q. Based on that discussion, if there is an agreement reached about what treatment should proceed forward, do you provide the patient with any type of written treatment plan?

A. Generally, no.

Q. Tell me why.

A. Because I just sat and discussed it with the patient, gone over it with them. If they asked for an estimate of fees, I may go over that. Alternative other treatment, usually I do it verbally. Just my nature of doing things.

Q. If the patient asked for an estimate of fees, are there occasions when you will provide them with a written estimate?

A. Yes.

Q. Typically, not specifically, but typically, what do you put in that written statement, in terms of the estimate?

A. The treatment that's going to be

performed and the fees involved. If there's an insurance payment, we will provide an approximation of the fees from the insurance company and the co-payments necessary, or wait for the insurance company -- send the form to the insurance company for pre-estimate of payments or benefits, and then proceed from there.

Q. When you're discussing the treatment plan with the patient, do you also discuss with them the risks or benefits of proceeding forward?

A. Usually, yes.

Q. Do you also discuss with them any alternatives that may arise as a result of what you're proposing?

A. Yes.

Q. Would you agree, Doctor, that if you did not discuss the risks, the benefits and the alternatives with the patient at that time, that that would be a departure from good and accepted dental practice?

A. Yes, it is.

Q. Now, you're licensed to practice

dentistry in the State of New , correct?

A. .

Q. How long have you been in practice?

A. Since . August of ' . July of

Q. Are you licensed to practice in any other state?

A. No.

Q. Has your license to practice dentistry ever been suspended?

A. No.

Q. Has it ever been revoked?

A. No.

Q. Are you on staff at any hospital?

A. No.

Q. Have you ever lectured to any group of dentists as part of an organization, a dental society?

A. A study group.

Q. Other than a study group?

A. No.

Q. A national body of dentists?
A. No.
Q. Have you published anything in the field of dental medicine?
A. No.
Q. Is it important to perform a dental examination on a patient when you see them for the first time?
A. Depends on the circumstance.
Q. Let's assume the patient is not coming in for an emergency visit and they're coming in to seek treatment for a particular condition.
A. A particular condition or a general checkup? Sorry.
Q. Not a problem. I'll rephrase it.
A. Thank you.
Q. If a patient comes in for a general checkup, do you agree it's important to perform a dental exam?
A. That's the proper procedure, yes.
Q. Even if they come in with a

specific complaint, it's also important to perform an exam at that time, correct?

A. Again, depends on the situation.

Q. Tell me what you mean.

A. The patient may come with a specific emergency situation with severe pain or some other situation that requires immediate attention to that one area. In that case, we will focus on that one area. I will usually, in almost all cases, take at least a survey of the mouth to see if there's any major reason not to do one specific tooth, but the general purpose at that visit would be to relieve the patient of the pain that they're in. Follow-up visits would be a complete -- a comprehensive examination.

Q. On an occasion where you are going to perform a comprehensive examination, describe for me what that comprehensive examination consists of.

A. First step we have the patient sitting in a chair, fairly erect. Examine deviations and side to side, looking for

general deviations, something swollen, something obvious on the face. Examine the lymph nodes and TMJ area by palpation. If I find that there's a TMJ problem or something like that, I focus on that one area and then proceed with the rest of the examination. That would include checking the lips, the tongue, under the tongue, having the patient stick their tongue out, looking -- having them -- examine the palate area, cheeks, and then proceed with tooth examination.

Q. What does your tooth examination consist of?

A. Periodontal probing, caries checking, any other -- observe broken teeth or any defects, deformities that you might see on a visual exam, and then follow it up by appropriate X-rays, and then putting it all together after that.

Q. Now going back for a moment to formulation of a treatment plan, after you've discussed with the patient a treatment plan and the patient has agreed

to proceed forward, do you ever have them sign a form, either a consent form or something else agreeing to your treatment plan?

A. No. It's not my practice to do that.

Q. After performing an examination and looking at X-rays and formulating in your own mind a course of treatment, do you typically record information in your notes about what you've just done?

A. Yes.

Q. Tell me why you do that.

A. To note the conditions in the mouth that would require treatment or in some cases that don't require treatment or if there would be need to refer the patient to a specialist such as a periodontist, oral surgeon, et cetera, orthodontist.

Q. Would you agree, Doctor, that it's important as part of your dental practice when examining a patient to keep accurate records?

A. Yes.

Q. Would you agree it's important to keep thorough records?

A. Depends on your definition of "thorough."

Q. How would you describe it?

A. Information necessary to record what is planned and what's being done.

Q. Would you agree it's important to keep detailed records about your evaluation and your plan of treatment?

A. Again, depends on the level of detail.

Q. Now, in your practice, going back to up until , did you have somebody who would be a recorder, somebody who would write notes in your chart for you as you were --

A. No.

Q. -- performing treatment?

Would you be the one who would be making notes into the patient's chart?

A. Yes.

Q. Would you agree, Doctor, that failure to keep accurate notes when

treating a patient would be a departure from good and accepted dental practice?

A. Depends on what your definition of "accurate" is.

Q. Doctor, you told me that it's important to keep -- I'm sorry, it's important to keep accurate notes in the event you need to refer the patient out, to refer back to a treatment and observations you had made.

A. Yes. Accurate notations would mean what you do see or what you discuss. Not making something up.

Q. Correct.

A. Accurate, yes.

Q. And the failure to keep those accurate notes would be a departure from good and accepted dental practice; you would agree with that?

MS. : Note my objection.

You can answer.

A. If you mean by putting false information in the chart?

Q. No.

A. Because that's inaccurate information.

MS. : Listen to the question.

Can you read back the question.

[The requested portion of the record was read by the reporter.]

A. Yes, to the extent I answered it before.

Q. You mentioned something about periodontal charting. Tell me what that is.

A. You would probe depths of a patient's pocket, periodontal pocketing. In my examination, in my examination, beginning -- or excuse me, an initial examination, you would use a periodontal probe and check areas, and if there was a significant finding, you would chart it on -- put it on the chart. On the chart in the appropriate spots.

Q. Why do you do that?

A. It's part of a dental examination, if you're examining the entire

mouth.

Q. If you did not perform a periodontal examination, would you agree that that would be a departure from good and accepted practice?

MS. : Note my objection.

I ask that you rephrase the question because it's unclear as to what timeframe you're talking about.

Q. At the initial visit when a patient comes in and you're performing a comprehensive examination, would you agree at that time the failure to perform a periodontal examination would be a departure from good and accepted dental practice?

A. No.

Q. Tell me why.

A. Based on X-ray examination, general oral condition, there are patients who you can tell. A very cursory examination might be accurate. Some patients not adequate. There is no absolute on this. You're asking an

absolute. No, the answer is no.

Q. In the event you perform a periodontal examination, as part of your exam, would you agree that failure to record that information and what you observed would be a departure from good and accepted dental practice?

MS. : Note my objection.

You can answer over objection.

A. Repeat that, please.

Q. Sure.

[The requested portion of the record was read by the reporter.]

A. Within limits, I would record problem -- I would generally record --

MS. : That's not the question.

Read back the question.

[The requested portion of the record was read by the reporter.]

A. Yes.

Q. Tell me why.

A. If you note a problem, it should be written in the chart.

Q. If you perform a periodontal exam and you don't observe any periodontal problems, would you make an entry in the chart indicating that you actually performed a periodontal exam and did not observe any abnormality?

A. In my chart, I would write down examination. Unless I'm doing a specific periodontal examination for a localized condition, that goes under the general heading of examination.

Q. Doctor, when you do a periodontal examination, I think you mentioned you probe for pocket depths?

A. Yes.

Q. And why do you do that?

A. As a screening, to see if the patient requires periodontal treatment, referral to a periodontist. Routine cleaning.

Q. What level of pocket depth would you need to observe in order to determine that the patient needs further periodontal care?

A. Again, it depends -- there are too many factors to say there is an absolute.

Q. Let me ask you an even more basic question, and I didn't ask this before. As part of your comprehensive examination, if do you not perform a periodontal exam, in your opinion, would that be a departure from good and accepted dental practice?

MS. : Note my objection.

I believe you did ask this, but you can answer over objection.

A. I'm sorry, please.

Q. I'll rephrase it.

As part of performing a comprehensive dental exam on a new patient, if you do not perform a periodontal exam, do you have an opinion as to whether that would be considered a departure from good and accepted dental care?

A. No.

Q. Tell me why.

A. Do I have an opinion?

Q. Do you have an opinion --
A. Yes, I have an opinion.
Q. What's your opinion?
A. Again, every patient presents a different circumstance. Again, there are no absolutes. It's the dentist's judgment in how far a treatment, how far an examination are determining factors.
Q. As part of a comprehensive examination, is it important for you to evaluate whether or not a patient has cavities or caries?
A. Yes.
Q. Why?
A. As part -- again -- I'm sorry, rephrase the question.
Q. When you do your comprehensive examination, you mentioned that it's important for you to determine if the patient has any cavities or caries, correct?
A. Correct.
Q. Why is that important for you?
A. If they need to be -- caries

generally would need to be treated.

Q. If you observe that the patient has caries, what do you do at that point?

MS. : That minute that he sees the cavity?

MR. OGINSKI: I'll rephrase.

Q. If you make an observation that the patient has caries, first, do you chart that?

A. Yes.

Q. Why do you chart that?

A. So I know on my record what the condition exists in the mouth.

Q. In addition to noting which tooth it is, do you identify where on the tooth the caries are observed?

A. Yes.

Q. That would be either mesial, buccal, occlusal --

A. Distal.

Q. And why do you identify where the carie is located?

A. At that point, you would need that information to properly restore the

tooth to remove the caries, drill the whole tooth out, remove the spot.

Q. If you take X-rays at some point during that examination and you observe caries on the X-rays, do you also chart those caries that you observe on the X-rays?

A. Yes.

Q. Again, why do you do that?

A. Same reason.

Q. Do you identify the location within each tooth when you make those observations?

A. Yes.

Q. During your clinical exam, if you observe caries, if you do not chart where those caries are located, is that a departure from good and accepted dental practice?

MS. : Note my objection.

You can answer over objection.

A. Yes.

Q. Tell me why.

A. Excuse me, why it's a departure?

Q. Yes.

A. It's standard charting. It's how you keep your record of what is existing in the patient's mouth.

Q. Would the same be true for observing caries on an X-ray that are not charted?

A. I don't understand.

Q. Sure. If you make observations that there are cavities on a patient's X-rays and then do not record them in the patient's chart, would that be a departure from good and accepted dental care?

MS. : Note my objection.

You can answer over objection.

A. Yes.

Q. Would that be the same reason as your prior answer, that it's standard practice to do so?

A. That's how you -- it's so you have your information of what you're going to be treating, what needs to be treated in the patient's mouth.

MS. : Listen to the

question and answer the question.

THE WITNESS: I'm sorry.

MS. : It's okay.

Q. In the course of your career, have you had occasion to treat patients with fixed bridges?

A. Yes.

Q. Can you tell me, Doctor, what are the different causes that would have a patient with a loose fixed bridge?

MS. : What are the causes for why the bridge is loose?

MR. OGINSKI: Thank you. I like that question better.

MS. : If you can attest to the possible causes for why a bridge would be loose.

A. Can I ask, quick clarification, did you determine the entire bridge with the teeth attached or just the actual physical bridge coming out of the mouth? Different situations.

Q. Let's start with the teeth attached and then I'll ask it without.

A. I'm sorry, that really doesn't clarify --

Q. Okay.

A. -- the question -- if I can try to --

THE WITNESS: May I? To answer the question.

MS. : I want you -- you need clarification to answer the question.

A. The bridge could be loose because the physical bridge is loose from the teeth due to underlying decay, cementation problem. If the bridge is loose and the teeth are mobile underneath, and that's periodontal support -- it may be a periodontal condition and not the bridge being incorrect. The patient could also have a fracture.

In general -- in most situations that I've seen of the physical bridge being loose with the teeth functional and still healthy, it's cementation or decay.

Q. The type of cement that is used

to attach a fixed bridge, can you describe that cement or what it's called?

MS. : In any case?

MR. OGINSKI: In general.

MS. : You want to know the type of cement that he typically -- are you talking about permanent cement --

MR. OGINSKI: Yeah.

MS. : What permanent cement --

A. Glass ionomer.

Q. Is the temporary cement different than the permanent?

A. Yes.

Q. What do you call that?

A. It's -- I guess a generic form is mostly zinc oxide, eugenol and they do make some without the eugenol. 20 brands. They're all pretty much the same thing.

Q. If a permanent cement is used to affix a bridge and the bridge is still loose, what other possible causes might be attributable to the looseness?

A. You're talking about the bridge and not the roots.

Q. Correct.

A. Bruxism.

Q. Define.

A. Heavy grinding on the teeth.

They could have bitten something the wrong way, physical injury. My son's case, getting hit in the mouth with a hockey puck.

Q. Would the other possibilities still apply, that there might be decay underneath?

A. Yes, but you asked me for if there were different situations. That would be a different situation.

Q. Can you explain to me, Doctor, why a patient can develop persistent bad breath?

MS. : The possible dental reasons?

MR. OGINSKI: Yes.

MS. : Because there are other reasons.

MR. OGINSKI: I know. Of course.

MS. : I'm only going to allow him as to the possible dental reasons.

MR. OGINSKI: Correct. That's fine.

MS. : Do you understand?

A. Dental reasons.

MS. : The question was what are the possible dental reasons for a patient developing bad breath.

A. Infection, food impaction, poor home care.

Q. Can you define what you mean by "poor home care"?

A. Improper or inadequate or nonexistent tooth brushing, flossing. General home care.

Q. If the patient complains to you of having persistent bad breath, what do you do to evaluate the cause, if any? In other words, if it's a dental-related matter?

A. For me -- clarification, please? You're asking --

MS. : If you don't understand the question --

A. I mean -- I would say dental-related is less likely than other reasons. I think more systemic reasons are probably more common than the dental reasons.

Q. If you believe that the patient may have a systemic problem, what do you typically do at that point?

A. Discuss habits. If they find they're having stomach issues or digestive issues, could be an infection in the sinus, in the mouth, in the throat. There are probably more other causes than dental of bad breath.

Q. If a patient makes a complaint of bad breath, do you attempt to rule out the dental causes?

A. Yes.

Q. How do you do that?

A. Examination. Gentle probing on the tooth. If the patient is having a bad

breath issue, whether it's an infection, you see that fairly easily without an in-depth, severe -- if they're having a bad breath issue, it's probably something that's pretty observe...

Q. If a patient has caps that fall out, what might cause a cap to fall out, other than trauma?

A. A cap is a crown. A crown -- multiple crowns make a bridge. It's the same situation as before. Decay, poor cementation, most likely. Fracture.

Q. If a patient comes in with a cap or crown having fallen out, how do you determine why it fell out?

A. Observation. If there's decay, you'll see the decay. If everything is stable underneath and the crown fits, you assume it's a cementation problem.

Q. As a general matter, Doctor, how often do you take X-rays of patients who come in for their visits? Again, other than for emergency visits.

A. A patient --

MS. : One second. Could you just read back the question.

MR. OGINSKI: I'll rephrase it.

MS. : Okay.

Q. Tell me how often you recommend that patients have cleanings?

A. Every -- a patient of record, patients coming -- clarification on this, for a patient who's been in the office, not somebody who just walked in off the street.

Q. Correct.

A. We recommend every six months for a cleaning.

Q. Is that considered prophy or prophylaxis?

A. Yes.

Q. As part of that, what do you do? What's involved in that cleaning process?

A. Other than the examination which --

Q. Yes.

A. Scaling, hand scaling, cavitron scaling, if necessary, and polishing, regular prophylaxis polishing.

Q. Did you have a problem or some sort of protocol in your office where you would notify a patient to return to your office on a scheduled basis?

A. Yes.

Q. What do you do --

A. We have a postcard system. When the patient has their prophylaxis and checkup, they're asked to fill out a postcard, which is kept on file, and we send it back to the patient at the appropriate time.

Q. In your office, between and , did you have a hygienist who did the cleanings?

A. No.

Q. Did you do the cleanings?

A. Yes.

Q. When a patient would come in for these cleanings, either when it's done or shortly after, did you make a note in the chart indicating the patient was there for a cleaning and that you had done the cleaning?

A. Yes.

Q. Typically, would you record any observations you made about your examination and your cleaning?

A. If there was a significant observation, yes.

Q. Is that part of the charting process?

A. Yes.

Q. And would you agree, Doctor, that the failure to record your observations of what you said, significant findings, would be a departure from good practice?

A. Yes.

MS. : Note my objection.

A. Yes.

Q. Now, are there instances when you perform a cleaning and you also do periodontal probing at the same time?

A. Depends on the patient and the circumstance.

Q. All of my questions are going to relate to the time period, Doctor, between

to , unless I indicate otherwise.

During that time, were there occasions when you would refer patients out to a periodontist?

A. Yes.

Q. Did you know a Dr. ?

A. Yes.

Q. Was he one of the periodontists who you referred patients to?

A. Yes.

Q. If you sent a patient to him, typically, would he write a note to you about what he observed and what he did for the patient?

A. Yes.

Q. If you had a question, you could pick up the phone and call him?

A. Yes.

Q. At some point during Mr. care and treatment, you referred him to Dr. , correct?

A. Yes.

Q. Tell me why you referred him to

Dr.

A. Mr. had significant decay apical to the crowns that he had in place when he came for the first visit in my office. To properly make a crown, it would have to be what's called a crown lengthening procedure to get an adequate margin for the new crowns to be made.

Q. When you sent Mr. to Dr. , did you give either the patient or Dr. any specific instructions on what to focus on?

A. Yes.

Q. What did you -- and to whom did you give specific instructions to?

A. Dr. was told that Mr. had asked specifically about the front bridge. That was the focus of the treatment.

Q. The front bridge would refer to which particular tooth?

A. I guess it's -- number 6 through 11.

Q. Doctor, since you're referring

to things within your chart, just tell me what you're referring to, please.

A. The visit date?

MS. : What are you looking at?

A. The patient's chart. My chart of the patient.

MS. : You're looking at X-rays, treatment notes? What are you looking at?

A. In this case, I'm looking at treatment notes.

Q. Doctor, you have in front of you a whole bunch of notes that you brought with you. Tell me what it is that you brought with you today.

A. The entire -- the patient's chart with records of the treatment.

Q. The page that you're looking at, the first starting date is February what, , ?

A. Yes.

Q. The last date written on that page is ?

A. Yes. That wasn't a treatment date.

Q. I understand.

The notes that appear on this particular page, Doctor, these are all in your handwriting?

A. Yes.

Q. Do you have any other notes for this particular patient?

A. No.

Q. I notice in going through this this morning, you also brought your billing records with you as well, contained within your records.

MS. : Yes or no, did you --

A. Yes, they're in the chart.

Q. Do you have any other billing records for this patient in any other place not here today?

A. No.

Q. What is a full mouth series?

A. It's X-rays of all areas of the mouth, the teeth in the mouth.

Q. When a new patient comes to you, do you typically take a full mouth series?

A. No.

Q. Tell me under what circumstances you would take a full mouth series.

A. A full mouth series is taken -- it should be no more than every three to four years. A patient comes in with a full mouth series two years old, I wouldn't take another one. I would do a bitewing series as a screening. It's just too much radiation to take the full mouth series more often than that.

MS. : Listen to the question and just answer the question.

Q. What is a Panorex film?

A. Panorex is a film that takes an X-ray image around the entire head.

Q. Under what circumstances would you take a Panorex of the patient -- of a new patient?

A. Me? I don't have -- I don't do Panorex in my office.

Q. How frequently do you take

bitewings of patients for checkups?

A. Recommended to the patient once a year.

Q. Is there a particular area within the mouth that you'll take those bitewings?

A. By definition, bitewings are taken on the sides, the posterior teeth.

Q. Now, when Mr. came to see you for the first time, did you learn how it was that he came to see you? How he was referred to you?

A. No.

Q. Did you participate in a number of different insurance plans in ?

A. Yes.

Q. As part of those insurance plans, did you agree to accept whatever the patient's insurance was for treatment for that particular year?

A. We agreed to accept the fee schedule of that plan. There may be co-payments. The insurance may not be a hundred percent payment. But we agree to

accept the parameters of the insurance plan.

Q. Were there some insurance plans that had a maximum amount that they would reimburse you per year for dental treatment?

A. Yes.

Q. What if you determined that the patient required additional dental care and treatment during that year period, what would you recommend to the patient, knowing that you would not be reimbursed above a certain amount for that year?

MS. : Just note my objection to the question. It's unclear.

MR. OGINSKI: I'll rephrase it.

Q. If you determined that the patient needs let's say $5,000 worth of dental treatment to be done relatively soon, and that it should be done within a year period, but the insurance company only will pay let's say a thousand dollars. What do you tell the patient at that point?

A. I tell the patient that this is the work you need, this is how much your insurance company is going to pay, and this work still has to be done.

Q. If a patient has a loose fitting bridge and the cause of that loose fitting bridge is because of decay under the teeth, what can happen to the patient if that decay is not treated in a timely fashion?

MS. : Could you read back the question.

[The requested portion of the record was read by the reporter.]

MS. : Overall? I didn't go --

MR. OGINSKI: In general.

A. Possible circumstance could be fracture of the tooth at the area of decay, that means the whole bridge would come out. Could be a cause of a root canal problem in the tooth. Infection. It could lead to periodontal pocketing because of bacteria of the decay or food getting into that area.

Q. Can it also lead to bone loss?
A. The only time it would probably lead to bone loss, only if there was food impaction or periodontal infection due to the decay.
Q. How would you know, Doctor, if there was decay under the bridge? How would you diagnose that?
A. Well, can I clarify this?
Q. Sure.
A. If you're talking about a lower tooth, it would be under the bridge, an upper tooth would be above the bridge.
Q. You're right. I apologize.
A. The word is apical to the bridge, is the proper term.
Q. How would you determine if there was decay apical to the bridge or above the bridge or in the lower case, below the bridge?
A. An X-ray or exploring -- using a dental explorer. Or clinical observation, if it's, you know, easy to see.
Q. Are you able to see decay under

a bridge that is still within the patient's mouth?

A. If it's visible between the bridge and the gumline, you might -- it's possible.

Q. What would you see in that instance, if you're able to observe that? Would you see -- what would you see, redness, swelling? You tell me.

A. To see decay?

Q. Yes.

A. Decay is most likely caramel colored. I think you still have to use an instrument to feel for it.

Q. If clinically you make an observation that there may be decay, what's the next step you do in order to confirm that there is decay present?

A. Same steps I explained before. It's using an explorer or X-rays and then combining the information. Or physical observation.

Q. Let's turn, please, to your first note for Mr. .

On the first visit, did Mr. have a specific complaint or a specific problem that he came to you for?

A. Yes.

Q. What was it that he first came to you for?

A. He was having problems with his front bridge, upper front bridge.

Q. That's number 6 through 11?

A. Correct.

Q. Could you do me a favor, Doctor, I would like you to read your note in its entirety, and if there's an abbreviation, just tell me what it represents.

A. Broad FMS, full mouth series. TP, treatment plan, re-do fixed bridge 6 through 11. Reoccurring caries. Advised patient may need additional posts and/or root canals.

Q. On that first visit, did you do an examination of the patient?

A. No.

Q. Tell me why --

A. We just discussed the front --

we only looked at the front teeth. That was his interest at the time.

Q. Did you prepare a treatment plan on that first visit?

MS. : What do you mean by "prepare"?

MR. OGINSKI: I'll rephrase.

Q. Did you formulate a treatment plan?

A. Yes, replace the front bridge.

Q. How did you intend to do that -- what was your intention as far as recommending to the patient what you were going to do?

A. We were going to remove the bridge and fabricate a temporary bridge, evaluate the condition of the teeth -- what was remaining of the teeth involved.

Q. Had you formed an opinion at that point as to the condition of the tooth?

A. It may be additional posts or root canals.

Q. Did you specify which particular

teeth may need additional treatment?

A. No.

Q. Did you document anywhere in your chart which teeth might need any particular treatment?

A. We said the bridge had to be removed and evaluated when the bridge was removed.

Q. Did you take any X-rays on that first visit?

A. No.

Q. The patient brought with him his own X-rays taken earlier, correct?

A. Correct.

Q. And you have those, I believe?

A. Uh-huh.

Q. The date of those X-rays, Doctor, are what?

A. 12/9/ .

Q. Those were taken a little bit more than a year earlier?

A. Yes.

Q. Based upon your evaluation of those X-rays, what was your conclusion

about the condition of Mr. 's teeth?

A. There was decay apical to the -- several teeth.

Q. Which ones in particular?

A. Specifically number 11, which was obvious on the X-ray.

Q. Any others?

A. And number 8.

Q. Did you ask Mr. why he had not had treatment for the decay on those particular teeth?

A. No.

Q. Did you ask him why he had left his prior dentist that he was seeing in order to come to you?

A. I don't remember.

Q. Now, on that first visit, did you do any periodontal examination?

A. No.

Q. Did you do any periodontal charting?

A. No.

Q. Did you do an examination of any other part of Mr. 's mouth?

A. No.

Q. Did you chart the decay that you observed on the X-rays that you just told me about, teeth number 11 and 8?

A. No.

Q. Is there any reason why you did not?

A. Because the following visit -- because at the subsequent -- the next visit, we were going to remove the bridge and get a better idea of what was the condition of the teeth.

Q. What was the timeframe that you told Mr. it would take you in order to do the proposed work you were suggesting?

A. I did not give him a timeframe.

Q. How long did it typically take in order to remove a bridge and then fabricate a temporary bridge back in ?

A. Typically, there's no typically. General, we would set up an hour and a half visit.

Q. I'm sorry. It was a bad question. Let me rephrase it.

In order to do the work that you were proposing, remove the bridge -- I'm not talking about one particular visit. The length of time in order to complete the course of treatment you were suggesting to the patient, how long would you expect that treatment to take?

MS. : Are you referring to completely replacing the bridge from 6 to 11?

MR. OGINSKI: Yes.

MS. : Okay.

A. It's indeterminant depending on the underlying condition. I think there are too many factors to say you can do this in one visit, two visits, four visits, six months, until everything heals. Every tooth has to be treated on its own merits.

Q. Would you say that Mr. as a patient was compliant with your instructions?

MS. : Overall?

MR. OGINSKI: Yes.

MS. : Did you consider

him a compliant patient?

A. Reasonably, yes.

Q. Were there any occasions where Mr. 's wife, , accompanied him to the office?

A. I'm assuming she was probably there at some point. Generally she wasn't.

Q. During the course of time that you were caring for , did you have any conversations with his wife, with ?

A. Not that I recall.

Q. Were there occasions when Mr. would come into your office for emergency visits because of a problem?

A. You have to define an emergency in this case.

Q. An unscheduled visit.

A. An adjustment?

Q. No. An unscheduled visit.

A. Yes.

Q. Why would he come in for an unscheduled visit?

A. Generally for an adjustment on the occlusion or if the bridge might have

been loose.

Q. Tell me what you mean by an adjustment on the occlusion.

A. He might have been hitting one spot prematurely or in a chewing pattern, might have needed an area changed, adjusted.

Q. Do you have a memory of how many times Mr. made unscheduled visits for having a loose bridge?

MS. : A memory independent of this chart?

MR. OGINSKI: Yes.

MS. : Do you have --

A. I know he did come in, you know, quite a number of times. I couldn't give you the exact number.

Q. Could you estimate for me when you say "a number of times"?

A. Wouldn't venture a guess.

Q. Would it be more than five?

A. Probably, yes.

Q. More than 10?

A. Probably not.

Q. For an adjustment on the occlusion, how many times would you say he came in?

A. That's what we were just answering.

Q. I asked you about the loose bridge.

A. Oh, I couldn't specify which was which.

Q. On the occasions when he came in for either an adjustment on the occlusion or for a loose bridge, would you see him on those occasions?

A. Yes.

Q. And would you --

A. Within limits of the office availability.

Q. Of course.

When you did see him during those unscheduled visits and tried to correct whatever problem he was having, would you typically make an entry in your chart indicating that the patient was here for an unscheduled visit?

A. Sometimes no.
Q. Why not?
A. Office -- general -- that's the way I do things.
Q. As you're looking at your patient chart in front of you, Doctor, were there instances where the patient came to your office for an unscheduled visit, whether it was for a loose bridge or an adjustment on the occlusion for which you did not record the fact that he was present?
A. Yes.
Q. How many times did you do that?
A. I don't know. Can't recall.
Q. As you sit here now, how are you able to determine what treatment you rendered to Mr. on any of those occasions for those unscheduled visits without having the benefit of recording that information?
MS. : Note my objection.
He never testified that he could tell you what he did on any of those

occasions.

MS. : That's what I'm asking.

MR. OGINSKI: I'll rephrase it.

Q. Without having the benefit of recorded information of when Mr. came for an unscheduled visit and what you did for him on any of those visits, are you able to tell me today what it was that you did on each and every one of those unscheduled visits?

A. No.

Q. Are you able to determine which visit represented a complaint of a loose bridge, compared to an adjustment for the occlusion?

A. No.

Q. Are you able to tell me if any of those unscheduled visits related to caps or crowns that had fallen out?

MS. : Are you able to say whether any of the visits that aren't here concern caps or crowns which had fallen out?

You're talking about the visits that are not recorded; is that correct?

MR. OGINSKI: Yes.

A. No.

Q. For those unscheduled visits for which you do not have any notes, did you bill the patient for those visits?

A. No.

Q. Why not?

A. The patient is paying for a procedure, which should include proper follow-up care. If something was wrong with the bridge, we always took care of it. It's the nature of my practice.

Q. You had told me earlier that it would be important as part of your standard practice to record notes in the chart when a patient comes in for checkups, for examinations.

If a patient came in for an emergency visit with a specific complaint, would you agree that it's also important to record the patient's complaint as to why they're there?

A. For an emergency visit with a specific complaint, yes.

Q. And would it also be important to record what your observation was after doing an examination for a specific complaint?

A. Yes.

Q. And the failure to document that information would be a departure from good and accepted dental practice, correct?

MS. : Note my objection.

You can answer.

A. In an -- can you go back to what the situation was --

MS. : She'll read back the last two.

[The requested portion of the record was read by the reporter.]

A. For an emergency situation with a specific complaint, yes, it would be a departure from practice.

Q. Doctor, let's go to the second visit -- I'm sorry, before we get to the second visit, what was the agreement

reached between you and Mr. after the first visit as to what the course of treatment would be or what the proposed treatment plan would be?

MS. : After the first visit?

MR. OGINSKI: At the first visit.

A. To come in and we would remove the fixed bridge and fabricate a temporary at that visit and evaluate what would have to be done to correct any problems under the bridge.

Q. At that first visit, did you give the patient any estimate as to what this might cost?

A. I don't recall.

Q. Is there anything within your notes or chart that you brought with you to indicate or confirm that you --

A. No, it would have been at the following visit.

Q. So let's go to the next visit and if you can read the date and read the

entire note, please.

A. 3/8/ , remove 6 through 11. 10 and 11 excavate caries below gumline. Number 10 -- number 2 flexing flank with composite core. Number 11 and number 3, fiber core and build up. Both require crown lengthening by periodontist. 6, 8 and 9 prep and temp. only. Next visit after periodontal surgery for re-prep and reevaluate for impressions.

Q. What appears to the right side --

A. Two and a half carpules of red is the Xylocaine -- Xylocaine two percent with Epinephrine, one, colon, 100,000.

Q. On this visit, did you do a full exam?

A. No.

Q. Tell me why not.

A. Mr. 's concern was strictly the front teeth.

Q. You removed the fixed bridge?

A. Yes.

Q. You observed the cavities on 10

and 11?

A. Uh-huh.

Q. Did you repair those cavities?

A. Yes. They were excavated and removed and then the teeth were built up.

Q. Did you chart what part of the teeth had the cavities?

A. No.

Q. Any particular reason why you did not?

A. Unlike posterior teeth, these teeth are fairly conical or round in shape, and you're removing all the decay and having a fresh surface on the entire 360-degree circumstance of the whole tooth. You're repairing the whole tooth in this case.

Q. You told me that looking at Mr. 's X-rays from December , there was also decay on tooth number 8.

A. Correct.

Q. Did you chart that?

A. No.

Q. Is there any reason why you did

not?

A. Again, once -- at that point, when we saw the decay there, we removed it. It was physical -- you know, visual observation.

Q. Now, you've told me that you repaired the caries on 10 and 11 --

A. Didn't repair. You remove caries.

Q. Thank you.

Did you also address the caries that you observed on tooth number 8 on this visit?

A. Yes.

Q. Did you tell the patient why he was being sent to a periodontist?

A. Yes.

Q. Did you perform any periodontal charting on that visit?

A. No.

Q. On what you did observe, did you do any periodontal charting?

A. No.

Q. Did Mr. have periodontal

disease?

MS. : On that visit?

MR. OGINSKI: Yes.

A. No, this wasn't --

MS. : Listen to the question. Did he have periodontal disease on that visit. That's the question.

A. In the area we treated, no.

Q. What was your intention as to why you wanted him to see Dr. ?

A. Patient needed periodontal treatment to expose more healthy tooth that would require -- it's called crown lengthening, to expose healthy tooth to have a proper margin for the crowns to go on.

Q. Had Mr. been complaining of his bridge being loose on either the first or second visit?

A. He was complaining that there was decay showing, and it was uncomfortable for him. That was all. He didn't go into very many specifics of it, except he needed

a new bridge on the front.

Q. Had you determined for how long that bridge had been in existence in his mouth?

A. No.

Q. Were you able to formulate an opinion as to whether it was a new bridge or something there for quite a long period of time or something else?

A. No.

Q. At this point, on March 8, , did you provide an estimate to the patient as to how much this would cost to get done?

A. In March, he was given the fees from his insurance company and what the insurance company would pay and what his co-payments would be.

Q. What would that be?

A. Total amount?

Q. Yes.

A. The six crowns were $, of which the insurance would pay $, left him with .

Q. Just tell me what it is you're

reading off of, Doctor.

A. A card with the patient's payment records.

Q. What was the agreement that the two of you reached on that visit?

A. That we would proceed with the work as recommended.

Q. For the amount that the insurance would not cover, how would the remainder be paid, if at all?

A. Paid by Mr. or whatever the insurance company would deduct from the total balance, then we accepted the fees, based on his insurance plan, the insurance payments would be deducted from that and his co-payments would be the balance.

Q. Just so I understand, you would accept the insurance payments, and any co-pays he would have to pay as well.

A. Yes. Totalling the fees as set by the guidelines of his insurance.

MS. : Can we take two minutes?

MR. OGINSKI: Sure.

[A recess was taken.]

Q. Now, Doctor, when you were recommending a treatment plan to Mr. , did you give him any alternatives to replacing the fixed bridge that he had?

A. We discussed the possibilities of removing teeth, the three basic possibilities, but there was really at this point -- this was the only real workable treatment plan for him.

Q. What were the other possibilities you mentioned?

A. Extraction and partial dentures, which of course was not considered. That was pretty much it.

Q. What was Mr. 's decision?

A. Re-do the bridge.

Q. Did you learn from Mr. that he had obtained estimates from any other dentists --

A. No.

Q. -- prior to coming to you?

A. No.

Q. Now, did you do a cleaning on

that --

A. No.

Q. -- visit on March 8, ?

MS. : Let him ask the --

THE WITNESS: I'll wait.

A. No.

MS. : Could you just read back the question and answer. Thank you.

[The requested portion of the record was read by the reporter.]

Q. Let's go to the next visit, please.

A. Okay. 3/25/ . Had crown lengthening 10 and 11, extended preps to gumline.

Q. What, if anything, did you do on that visit?

A. We went to where the work was done from the crown lengthening and extended the preparations to that level and adjusted the temporary accordingly.

Q. Was it necessary for you to take X-rays of any of the teeth that you were

working on up until that point?

A. No.

Q. Were the X-rays that you had obtained from Mr. from December of adequate and sufficient for you for your treatment purposes?

A. Yes.

Q. Continue with the next note.

A. . Final preparation temp. and impression, number 6 through 11, shade A2, incisors, A3 canines.

Q. Now, Doctor, when you removed the patient's bridge in order to evaluate it on March 8th, did you then reinsert it or did you leave it off?

MS. : On March 8th?

MR. OGINSKI: Yes, March 8th.

A. It was -- the temporary was realigned to fit what we had just done. There were corrections. And it was reinserted, yes.

Q. What's the next note you have?

A. What are we up to. . Try in castings, flash, pick up new bite.

Q. What is that?
A. It's a bite registration to determine where to set the teeth.
Q. What's the next note?
A. . Try in porcelain, sent to adjustment.
Q. What does that mean?
A. Went to the lab to make -- back to the lab to make corrections.
Q. Did you have a lab in your office?
A. No.
Q. You would send it out to a laboratory that you used?
A. Yes.
Q. Did you have multiple labs or did you primarily use just one?
A. Primarily just one. There was one other lab that I used, but in this case, no.
Q. The next note?
A. Repaired temporary, at is the date.
Q. What does that mean?

A. That's the date.
Q. When you say "repaired temporary," what does that mean?
A. Repaired the temporary, something was probably broken or needed an adjustment.
Q. Does your note reflect which one of those things it was?
A. No. It just says repair temporary.
Q. Do you have any information as you sit here now looking at this note today what it was that needed to be repaired?
A. No.
Q. What's the next note, please?
A. , try in, sent to finish.
Q. Now, from up until , did Mr. make any unscheduled visits or appointments in your office during that period of time?
A. I don't recall.
Q. Is there anything in these notes that you have in front of you today that would indicate that he made any unscheduled

visits for any reason whatsoever?

A. The only ones would have been on to repair the temporary.

Q. Other than that, is there anything else here that would suggest that he came in for an unscheduled visit?

A. No.

Q. Based upon what you told me previously, is it possible that he may have been in your office for which you simply -- for an unscheduled visit for which you did not record that visit?

A. It's possible.

Q. Also, Doctor, during the same time period, from to , is it fair to say that you were treating the bridge in teeth number 6 through 11 as opposed to treating the entire mouth?

A. Yes.

Q. At any point during these approximately four months, did you do a full mouth examination?

A. No.

Q. Did you take X-rays of the patient during this four-month period?

A. Only for trying in the bridge.

Q. Tell me what you mean by that.

A. When the bridge -- the casting try in, you take an X-ray just to see if it's sitting in the right position.

Q. Do you have those X-rays here today?

A. No.

Q. I'm sorry?

A. No.

Q. You have a packet, right --

A. They're not in there.

Q. I just want to establish that there's a packet there. Tell me what's written on that packet, Doctor.

A.

Q. What are those little packets?

A. These are the films that we store the X-rays in, and then sometimes we put them on the cards next to them.

Q. How many X-rays were taken on -- you said -- what was the date, --

A. .

Q. , how many X-rays were taken on that date?

A. Two. I'm sorry. Seven.

Q. Do you have those X-rays here today?

A. Yes.

Q. So just to be clear, Doctor, you have them, they're just not in the packets?

A. Not in the packets.

Q. You have those little punch cards where the little bitewing films are pushed in?

A. Right.

Q. What was the next set of X-rays, the date, in that packet that you mentioned? --

A.

Q. How many X-rays were taken on that visit?

A. One.

MR. OGINSKI: Off the record.

[Discussion held off the record.]

Q. Doctor, looking at your treatment chart for the patient, I notice that there is no date referenced to on the day these X-rays were taken. Can you explain that?

A. Right here (indicating).

MS. :

MR. OGINSKI: I apologize.

MS. : That's what I was telling you. It's a different year.

MR. OGINSKI: I apologize. My mistake. Thank you.

Q. Let me jump ahead. On , you mentioned you have one X-ray.

A. Right.

Q. But there's nothing referencing that in your patient chart. Can you explain why there's nothing correlating with that date, ?

A. For some reason, I have it down as improperly written here. . Because it is in ' already. I probably miswrote the date or the girls put in the

wrong day.

Q. Read that note, please.

A. , number 6.

Q. That refers to tooth number 6?

A. Tooth number 6. Number two access post, I erased the word Ticor, T-I-C-O-R, because we changed to different material. We went to composite core. Prep and temp.

Q. Is it your belief, Doctor, that the entry refers to the X-ray?

A. Yes, it does.

Q. The X-ray that you're looking at refers to which teeth?

A. Number 6.

Q. When you wrote down number 2 access post, what does that mean?

A. That's the actual post that was put in the tooth, the brand and the size.

Q. Let's go back, please, to the visit.

A. Okay.

Q. Can you read that, please.

A. Number 6 through 11, temporary cement. Number 5, MOD. Those are the surfaces, posterior composite. Shade A3 Filtek, SE flow. SE is the brand of bonding material. Flow is a base that you would use under the filling. One black, one carpule of Mepivacaine.

Q. When you refer to number 5 MOD, that would be mesial, occlusal, distal. And that refers to what?

A. That was the surface of the filling we had to repair and replace on tooth number 5.

Q. Had you observed those problems at any prior time?

A. No.

Q. What was it about that particular visit that caused you to make those observations that day?

A. When tooth number 6 had come out, visual observation of the mesial surface of tooth number 5 showed the crack in the filling that needed to be replaced.

Q. Continue, please, to the next

note. .

A. Bond incisal, wear facets, lower anterior number 3, which would indicate teeth number 22 and 27.

Q. What does that mean?

A. Those are tooth numbers -- what does it mean that he did?

Q. Yes.

A. Wear facets.

MS. : Chips?

THE WITNESS: No, it's more like -- it's worn away areas. You chew and you chew, and wear facet in there, they're just replaced with some bonding material.

Q. What's your next note, July?

A. Cement -- , cement 6 through 11 with Fuji, that's the brand of glass ionomer cement.

Q. Once you put in the -- this is the permanent bridge?

A. Yes.

Q. Once you put that in using the permanent cement, what is your expectation

as to whether this will remain in his mouth?

A. The expectation is that yes, it would remain in the mouth.

Q. Did it remain in his mouth?

A. It was -- he had come back in with just the one crown loose on number 6.

Q. To what, if anything, did you attribute that to?

A. Fractured post and distal margin, something broke. Number 6 is not part of a bridge. 6, 7 and -- 6 and 7 were individual teeth, individual crowns. 8, 9, 10 and 11 were a bridge.

Q. Let's just go through that again, please.

A. 6 and 7 were individual crowns.

Q. As part of his fixed bridge, what teeth numbers were they?

A. 8, 9, 10 and 11. 8 was a -- 9 was a pontic, there was no root under that tooth.

MS. : Could you read

back his last answer.

[The requested portion of the record was read by the reporter.]

Q. Let's continue, please.

A. Where are we.

Q.

A. Prophy.

Q. What was observed on that date?

A. There were no unusual observations at that point.

Q. Did you do scaling?

A. General scaling would be part of a prophy.

Q. Did Mr. have any periodontal disease that you observed?

A. No.

Q. If you had made such observation, would you have noted it?

A. Yes.

Q. If you felt that the periodontal condition was severe enough, would you have referred him to a periodontist for treatment?

A. Yes.

Q. Were there occasions back in when you would treat a patient with periodontal condition yourself?

A. Very minor. I would say the general standard of practice in my office is a patient is sent to the periodontist if I feel if there is any significant periodontal disease.

Q. After Dr. had performed his crown lengthening treatment in March of , did you and he ever have a discussion about what other treatment the patient might need from a periodontal standpoint?

A. No. Dr. and I didn't discuss that.

Q. Let's continue to the next note, please.

A. , exam, prophy was crossed out, we didn't do it. Four bitewings and one PAX.

Q. Let me stop you, Doctor. Was this a regularly scheduled visit?

A. Yes. I would assume -- I hadn't

seen him in five months, six months, so I assume it was a regular visit.

Q. Based upon that period of time between when he had last been in the office, can you assume that this was for a regularly scheduled follow up?

MS. : Note my objection.

MR. OGINSKI: I'll rephrase it.

Q. What was the reason why he returned back to your office on

A. He had a loose -- the crown on number 6 was loose.

Q. This was one of the teeth that had been worked on previously in your office on ?

A. Correct. That was the date they were cemented in place, yes.

Q. Was there any other reason that you recorded as to why the patient returned to your office?

A. He had a loose tooth number 6 was the main complaint.

Q. Read your note, please.

A. It says fractured post --

Q. You can from exam.
A. Four bitewings and one PAX, periapical X-ray.
Q. Go ahead.
A. Loose number 6, fractured post and distal margin, one periapical X-ray in addition to what we took. Remove post, place acrylic temporary core. Recement with temp. bond.
Q. That refers to --
A. Temporary cement.
Q. I know, but these two lines --
A. All number 6.
Q. Thank you.
Go ahead.
A. Treatment plan, number one, cast post, slash, telescoping, reusable crown, or number two, a new post and core and a new crown.
Q. How did you determine that the patient had a fractured post?
A. You took the crown that was loose off and you could see it.
Q. At any time before then, did you

observe a fractured post?
A. No.
Q. During this examination, did you do an exam of the remaining part of his mouth?
A. Yes.
Q. And did you chart any observations, other than what you recorded in this note?
A. No.
Q. Did you observe any caries or cavities on any of his teeth that you recorded?
A. At that visit, no.
Q. Do you have a chart for making such recordings or notes?
A. Yes.
Q. Do you have that with you?
A. Yes (indicating).
Q. The back of that page?
A. Uh-huh.
Q. Are there any notations at all on the back of that page?
A. No.

Q. Again, is there any particular reason why you didn't make any notes or entries on the back of that page?

A. No. Probably I was concerned with the initial tooth number 6.

Q. What was the agreed upon plan of treatment with regard to what would be done for number 6?

A. We agreed that he would come back and we would save the crown that he had existing, if we could build up the tooth properly. That would be the subsequent visit that he came in for.

Q. The next note that's recorded here, with what you said was an incorrect date,

A. Yeah.

Q. You said it should be ?

A. Yes.

Q. That's the one we talked about where the X-ray has -- I'm sorry,

A.

Q. Can you read that note, please.

A. Tooth number 6, number two access post, composite core, prep and temporary.

Q. So at this point, you're trying to restore the post?

A. Well, going back to the previous visit, there were two choices of treatment. One was to reuse the crown and it wasn't do-able. So we went to plan B, plan 2, which was a new post and core and we would make a new crown.

Q. When the patient returned a week later on , tell me what you have written there.

A. , number 6, final impression.

Q. That was for the crown?

A. Yes.

Q. What was the next visit, please?

A. , cement with temp. number 6, cement with temp. on. That would mean the real crown.

Q. That was in anticipation of waiting for the finalized crown?

A. No, that was the crown put in.
Q. Why do you use temporary bond --
A. Trying to observe the gumline.
Q. How long do you do that before putting in permanent cement?
A. At least a week. Sometimes if there are problems, you leave it as long as you can and wait for the gum to heal.
Q. In your opinion, Doctor, was there a particular problem as to why you would need to wait in Mr. 's case?
A. Because of the fracture on the distal of the margin, you want to see how the area would heal.
Q. When would you want the patient to return after putting in the crown with the temporary cement?
A. Ideally we wait about two weeks.
Q. Did Mr. return in two weeks?
A. No.
Q. From , up until , did Mr. make any unscheduled visits into your office for which you have

recorded it, other than what you've read to me?

A. No.

Excuse me. Please repeat that.

Q. That was a bad question.

From , , until , within that one-year period, can you tell me looking at this chart in front of you if Mr. made any unscheduled visits to your office?

A. Looking at the chart, no.

Q. Is it possible, Doctor, based upon what you've told me earlier is that Mr. had made a number of unscheduled visits, that he did appear in your office for an unscheduled visit?

A. Yes.

Q. Can it be more than one?

A. Yes.

Q. Again, is there any way for you to sit here now and determine when it was he may have returned during that year period that's not recorded in your notes?

A. No.

Q. Is there any way for you to know now as you sit here today what complaints brought him to your office for an unscheduled visit?

A. Can you please repeat that.

[The requested portion of the record was read by the reporter.]

MS. : If there were any.

A. From personal recollection, he was in for an adjustment on the occlusion occasionally.

Q. That would be for crowns or would that be for the fixed bridge?

A. Specifically I would recall it would be on number 6.

Q. That would be for the crown.

A. Uh-huh.

Q. Do you recall how many times he did that?

A. No.

Q. Did you determine why he would need to have such an adjustment?

A. His bite was not a hundred percent right, and whether it was because

of his -- when we would adjust it, he would come in for a slight adjustment here or there, we would follow along to make it as comfortable and proper as possible. These would be very minor adjustments each time.

Q. What would you do in order to make those adjustments?

A. With articulating paper, you would determine in function whether it might be an interference and you would remove the interference.

Q. How do you do that?

A. By removing some of the porcelain on the crown. In extreme circumstances, I don't recall if I had done this on Mr. , but possibly you can adjust the opposing tooth.

Q. And how do you remove some porcelain on the crown?

A. They have special burs you can use on a handpiece.

Q. Just so I understand, when you say you can remove some porcelain, are you shaving down part of the crown itself --

A. Yes.
Q. -- in order to adjust the bite?
A. Yes.
Q. When you say you can sometimes adjust the opposing tooth, that would be the tooth -- for example, 6 is on the top, correct?
A. Yes.
Q. You would then adjust the tooth directly beneath it on the bottom jaw?
A. Yes.
Q. In order to make it more comfortable for the patient?
A. Yes. Correct. I didn't say I did that.
Q. I understand.
A. That's a possibility.
Q. If you had made an adjustment to the opposing tooth, would you have recorded that?
A. Yes.
Q. Let's go, please, to the next note you have.
A. . Loose number 8, number

10, immobile. Removed old bridge. Re-do prep, temp. and impression.

Q. Loose number 8, tell me what that means.

A. On the bridge, one side of the bridge was loose. The opposite side of the bridge -- remember, there's a false tooth in between. On one side, number 8, that part of the bridge was loose. Not the tooth, but the actual physical bridge. Number 10 was immobile. It was in solidly, but you couldn't have that torque in there.

Q. Did you determine why this looseness was present?

A. No. It was either -- most likely it was a cementation problem, but we did try -- from personal recollection, we did try to recement just number 8, but it wasn't able to be done properly.

Q. How do you recement 8 without taking out the entire bridge?

A. You try, as I say, it wasn't -- we weren't able to do it, but you try to inject a cement. They do have some

syringes that they use into the crown and see the area.

Q. Did you make that observation that it would not work on that same visit or did you have him return and then --

A. No, when it just came right off, we said that's not going to work.

Q. Is that why you indicated you were going to remove the old bridge?

A. Correct.

Q. When you say re-do PTI?

A. Prep, temp. and impression.

Q. When you removed the old bridge, did you observe any decay?

A. I would have noted that.

Q. You would have been able to see that clinically just by observation?

A. And feeling with the explorer if it was necessary.

Q. Did you observe any signs of infection at that time?

A. No.

Q. Did you observe any type of impacted food at that time?

A. No.
Q. Did you record any observation by Mr. of having bad breath?
A. No.
Q. Read your next note, please.
A. 11/14, cement 7, 8, 9, with Fuji -- it should have been 8, 9, 10.
Q. Doctor,
A. No, , try in, sent to finish.
Q. The try in was the temporary bridge?
A. No, try in was a permanent bridge, for a try in to make sure it fit properly.
Q. And the next note, please?
A. Number , cement -- it says 7, 8, 9, it should be 8, 9, 10, with Fuji. Remove and recement posts and core -- excuse me, post and crown number 6 with Fuji cement. Adjust occlusion number 6, reducing occlusal.
Q. You said cement 7, 8, 9 --
A. It was a mistake. It should be

8, 9, 10.

Q. Tell me why.

A. Why, that was the new bridge.

Q. So 7 is not part of the bridge?

A. Yeah, it should have been 8, 9, 10.

Q. Why was 6 addressed at this point?

A. It never had the permanent cement put in. That was from back to 6/19, he had the temp. on, and it was in from them. It was never permanently cemented until that date.

Q. The cap on the number 6 -- the crown on number 6 --

A. Same thing.

Q. -- was removed and then the permanent cement is put in at this point?

A. Yes.

Q. So I just want to be clear, again, Doctor, on this November 14th visit, did Mr. make any complaint about number 6, the crown coming out?

A. No.

Q. It was just the --
A. Routine procedure.
Q. Relating back to the
A. Correct.
Q. -- temporary cement that was put in. You're just putting in the permanent cement here for 6.
A. Uh-huh.
Q. When you removed the crown on number 6, did you observe any decay at that point on 6?
A. I would have written that down if I did. So the answer would be no.
Q. Going back to the last X-ray you had taken on , the one X-ray.
A. Okay.
Q. Was there any evidence of decay on that tooth on ?
A. No. It was a fracture, the actual tooth had a fracture in it. We were able to proceed and get further -- we were able to get past the fracture and have a good margin on the tooth.

Q. On , he had now had a new post and core put in on tooth number 6?

A. No. That was the same -- we removed the entire piece, cleaned it up and recemented it with permanent cement, the same post, the same crown.

Q. Was the fracture still present or that had been fixed?

A. We didn't fix it -- well, it was added into the core. As I said before, we were able to get above the fracture and get a clean margin.

Q. When you adjusted the occlusion on 6, you're referring to the bite, how he bit down --

A. Yes, same as we explained before.

Q. What's your next note, please.

A.

Q. Go ahead.

A. Actually I'm going -- can I make a correction, please. Where we said adjust occlusion on number 6, because we had this

squiggle here, that was not from
That was the following visit,
Q. So the adjust the occlusion number 6 --
A. You see the squiggle there.
Q. That refers to
A. . Adjusted the occlusion number 6, reducing the occlusal.
Q. Would you have done that if Mr. had not made a complaint about his bite?
A. If I were to see something in an examination, you can sometimes tell if the tooth has a little mobility when you bite on it with your finger, do an exam, you might be able to feel some motion, that should indicate to me I should check the bite on that.
Q. Is it possible that he made a complaint about having a problem with his bite that may have caused you to adjust that?
A. He may have said something, I don't recall.

Q. Continue, please.

A. Four bitewing X-rays. Exam, prophy. Next visit, observe number 6, 17 -- should have been 18, mesial, caries.

Q. Where within the mouth is number 17?

A. 17 would be the wisdom tooth.

Q. Is this the first time you made --

A. It was supposed to be 18, not 17. It was incorrectly numbered.

Q. You're looking now at the X-ray --

A. On this, yeah. I'm just double-checking. 17 was incorrect. It was 18.

Q. What makes you believe that?

A. 17 is removed. Or never existed.

Q. Do you have any reason to know why you wrote 17 instead of 18?

A. No.

Q. Now, the four bitewings that you took on , do you have those

X-rays?

A. No.

Q. Where are those X-rays?

A. I don't know.

Q. When you took X-rays in your office, what was the procedure as to how they would make its way into the patient's file?

A. After the assistants would develop the X-rays and check them, put them into a yellow envelope and place them in the file.

Q. Did you look at these X-rays when they were taken?

A. Yes.

Q. Is there anything in your notes to indicate what you saw and observed on that visit?

A. We observed the cavity on that one particular tooth.

Q. That was cavity on 17 -- it would have been 18, but you recorded 17, correct?

A. Correct.

Well, actually can I take that back for a second? I can explain, all right. I can explain. If you want an explanation of the numbering system. Most likely it is 17, not 18. But it's in the position of number 18, because number -- I'm going back to -- number 19 was extracted and the other two teeth drifted forward. The clinical observation would say that's number 18, but in actuality, those two teeth, 18 and 19 had drifted into the 18 and 19 positions.

Q. Just for the record, you're looking at the full mouth series taken on ?

A. Yes. It's also on the X-rays from

MS. : Doctor, from here on in, just listen to the question and answer the question.

THE WITNESS: Yes.

Q. Do you have a packet for the X-rays that were taken on ?

MS. : You mean a yellow

envelope.

MR. OGINSKI: Yes.

A. No.

Q. Do you have any knowledge as you sit here today as to where those four bitewing X-rays are?

A. No.

Q. Other than the observation you made about number 17 having a carie, is there any other observation you made about those four X-rays?

A. No.

Q. Have you tried to locate those particular missing X-rays?

A. Yes, I did.

Q. Just tell me what efforts you made to try and find them.

A. We looked in the charts back from that day, when we went back to the appointment book and looked at whatever charts may have been taken out that day. We weren't able to find them.

Q. Let's go to your next note, please.

A. Where are we, number -- 4/5 -- right. . Recement number 6 with Max cement, M-A-X. Different brand.

Q. What does that suggest to you? What does that tell you?

A. There was a problem with keeping the single crown in.

Q. Why?

A. Don't know. Honest, I can give you possibilities.

Q. I want your best dental opinion --

A. Best dental opinion is he was biting funny on it, he was biting heavily on that one tooth. It could have been an excursion, could have been grinding his teeth which we talked about later on.

Q. Could it be for any other reason other than what you've just described, decay, infection, food impaction, something else?

A. No. The only other possibility will be the crown to root length and usually it's -- the best thing to happen

for a tooth is the cement gives way before the tooth fractures. The Max cement is just a different brand of the same cement.

Q. Was it your expectation that this cement would hold the crown in place?

A. Yes.

Q. Following that recementing process on , , did it hold that particular crown in place?

A. The next time he came in for that was to recement the crown.

Q. Does that suggest that the crown had come out again?

A. Yes. Or it might have been loose.

Q. Did you formulate any opinion at that point as to what the cause was as to why it had come out again?

A. You skipped a couple of visits.

Q. I'm going to go back.

A. That's important.

Q. But at this point, on October 28, , when you recemented number 6 in, had you formed an opinion as to why it had

come out again?

A. Yes. Going back to the 6/1 visit, he was complaining that he was under stress and maybe grinding his teeth, and I gave him a night guard to take home.

Q. Let's go back to the --

A. My opinion, he was grinding his teeth, that's the reason why the crown got loose.

Q. Let's go to the note.

A. Tooth number 18, MOV, posterior composite, B3B, it's a shade. SE flow. SE is a brand, flow is another material. One black which indicates a carpule of Mepivacaine.

Q. So in other words you were taking care of the cavity number 18.

A. Correct.

Q. What's the next visit?

A. Number 14, posterior composite MOV. He had chipped a tooth. And CO, complaining of bad breath. Upper anterior may be bleeding a little.

Occlusion, slash, within normal limits. Three periapical X-rays negative. Noted patient said under stress. Gave take home night guard kit, will observe.

Q. You mentioned in this note three periapical X-rays.

A. Yes.

Q. Do you have those?

A. No.

Q. Do you know --

A. I don't know why.

Q. Thank you.

At the time that you took those X-rays on , , which teeth were they of?

A. The upper anterior. And -- two on the upper anterior and one on number 14.

Q. Other than the one on 14, the upper anterior would represent which teeth?

A. 6 through 11.

Q. That would be part of the bridge.

A. Yes.

Q. I should say 6, 7, 8 --

A. 6 through 11.
Q. When you wrote negative, what did you mean?
A. There was nothing observed -- nothing unusual would be observed. There was no decay, no periodontal disease, bridge sitting properly.
Q. Did you make a search in anticipation of coming here for those missing X-rays?
A. Yes. Same search.
Q. Were you able to find any of those?
A. No.
Q. Did you determine why Mr. was experiencing bad breath?
A. No.
Q. Did you do anything to rule in or rule out dental causes for his complaints of bad breath?
A. The X-rays that we took, which turned out to be negative were looking for periodontal disease or pocketing which we did not find. The margins of the tooth

were not involved. Sometimes a poorly fitting crown could trap food. That was not the case.

Q. Then the next notation you have is

A. Recement number 6.

Q. According to this chart, is this the last entry you have for when Mr. was in your office?

A. Yes.

Q. With regard to the time period of , until a little more than a year later, , , are you able to tell from this chart in front of you whether Mr. made any unscheduled visits to your office?

A. No.

Q. Based upon what you've told me before, is it possible that he did return to your office for which you simply do not have a notation?

A. Yes.

Q. Are you able to estimate how many times he may have returned to your

office during this a little more than one-year period?

A. No.

Q. Are you able to tell from your chart whether -- what specific complaints he may have had in the event he did return during this approximately one-year period?

A. No.

Q. Do you have a memory as you sit here today of any particular unscheduled visits that he may have and specifically any complaints he made?

A. No.

Q. Do you have a memory, Doctor, of Mr. complaining to you about the bridge being loose, other than what you have recorded here?

A. No.

Q. I want you to assume for a moment that Mr. has given testimony in this case and has indicated that on more than one occasion he returned to your office with a complaint of a loose fitting bridge. Again, we're referring to the top

bridge. Do you have any reason to disagree with that particular testimony, that he came in more than once complaining of a loose fitting bridge?

A. Yes. That goes back to the parts we discussed already. Other than the one we discussed, no.

Q. I just want to understand your answer --

A. We had already gone over, said that he did come in for adjustments on a loose bridge. That's the part I remember. I don't recall a loose bridge -- anything else. He did come in several times for adjustments on the occlusion.

Q. That would be on the bridge, correct?

A. Yes.

Q. After , , did you learn that the patient at some point afterwards returned back to for ongoing care and treatment?

A. Yes, when they called on yes. Excuse me, when they called on

Q. What did you learn at that point?

A. He was going to the other dentist. That's all.

Q. Did you learn why?

A. No. We don't ask either.

Q. That was my next question. Did you ask?

A. No.

Q. Did you ever have a conversation with about this patient?

A. No.

Q. Did you ever have a conversation with a about this patient?

A. No.

Q. Do you know either of them personally?

A. No.

[A recess was taken.]

Q. After the X-rays were taken, did the patient come and pick up the X-rays?

A. Yes.

Q. And do you recall having a

conversation with him or --

MS. : I'm sorry, Counsel, we're talking about of ?

MR. OGINSKI: Yes.

Q. After those X-rays were picked up or at the time, did you have a conversation with the patient or was it a staff -- somebody in your office who just gave him the X-rays?

A. Yes. It looks like handwriting, or . A woman in the office.

Q. Did you ever have a conversation with any treating dentist after that time about Mr. ?

A. No.

Q. Did you ever have a conversation with Mr. at any time after ?

A. No.

Q. Did you ever review the patient's dental records after he had left your office?

A. No.
Q. When he went elsewhere?
A. No.
Q. Did you ever learn from anybody except your attorney what treatment Mr. had after he had left your office?
A. No.
Q. Did you learn from anyone, other than your attorney, that Mr. had had his upper teeth extracted?
A. No.
Q. Did you review any X-rays, other than the ones that you brought with you today, in preparation for today's questioning?
A. No.
Q. Did you review any dental literature, textbooks, journals, in preparation for today?
A. No.
Q. Have you ever testified before?
A. In a deposition or in a court?
Q. Either one.
A. In a deposition.

Q. How many times?
A. Once.
Q. How long ago? Approximately.
A. Probably around
Q. Was that as part of a case where a patient brought a lawsuit against you?
A. Yes.
Q. Other than that one time, did you ever testify in court?
A. No.
Q. Have you ever testified as an expert witness?
A. No.
Q. Where did you go to dental school?
A.
Q. When did you graduate?
A.
Q. After completing dental school, did you do anything else after that in terms of furthering your education? Your dental education.
A. My internship?
Q. If there was.

A. No.
Q. Did you go into private practice at that point?
A. Yes.
Q. Have you been in private practice continuously up until today?
A. Yes.
Q. In , Doctor, , ,
what was the name of your office?
A. .
Q. Did you have a corporation?
A. No.
Q. You were a solo practitioner?
A. Yes.
Q. During the two-year period, approximately, that you were treating Mr. , two-and-a-half-year period, were there occasions when Mr. had scheduled visits for which you had to cancel because of personal reasons?
A. It's possible.
Q. During the course of Mr. 's care and treatment, did you have any issues that you recall now with the lab as far as

being able to complete the work that you were asking them to complete in a timely fashion?

A. What were the times? No. I just meant that because sometimes in the summertime they close for a couple of weeks. That's all. But that wasn't the case.

Q. Did you ever tell Mr. that his bridge would tighten up on its own?

A. No.

Q. Did Mr. ever complain to you that because of his ongoing dental issues that he was having, that he was unable to smile?

A. Yes.

Q. Do you recall what you said to him in response to that complaint?

A. From what I recall, the problem was the bridge might be loose, and we would try to recement the bridge. And with the temporaries, once in a while, they might have popped out. We had to recement them. That was just treating the bridge being in

place.

MS. : Doctor, listen to the question and answer the question.

Could you read back the question.

[The requested portion of the record was read by the reporter.]

Q. Did you ever tell Mr. when he complained of not being able to smile that he shouldn't smile so much? Anything like that?

A. I don't recall that.

Q. Now, at any time when the crown number 6 had come out on more than one occasion, did you ever determine or tell Mr. why you believed his crown kept coming out, despite the fact that you were using the permanent cement?

A. We discussed the occlusion at one point. The possibility he may be grinding his teeth.

Q. When you provided him the night guard, was it your understanding when he returned back in October that he had been

using it?

A. He didn't say whether he was or not.

Q. Did you inquire of him as to whether he was using it and whether there was any problem?

A. No, I did not.

Q. Doctor, I'm going to show you what's in your notes which are the dental claim forms that you have, if you can take a look at them, please.

Tell me how those forms -- are these forms prepared by your staff to submit to the insurance company?

A. Yes.

Q. The treatment that's being submitted for payment, that relates to treatment that you performed on a given date, correct?

A. Correct.

Q. If you can look, please, specifically to the first one that we're looking at, it says treatment on , is that right?

A. .

Q. . Is there a corresponding date of treatment on your treatment chart?

A. Yes.

Q. Where is that?

A. , number 14, posterior composite.

Q. Very good.

Can you turn to the next page, please. The dates of treatment there on the form --

A. .

Q. Correct, you have corresponding treatment there.

A. Yes.

Q. Good. Next page, please.

A.

Q. What treatment is indicated on there --

A. Exam, four bitewings and one periapical X-ray.

Q. The next?

A. This is just the pre-estimate for the bridgework from

Q. Next?
A. That's the same.
Q. Same date?
A. That's the original copy and then the computerized form and the dates.
Q. There's a letter from the patient's insurance company about an overpayment of a thousand dollars. Just what's the date on that letter, please?
A. .
Q. Do your records indicate whether the insurance company was ever repaid for that overpayment?
A. There was not a mistake. We went back and forth with them for a while.
Q. What was the ultimate outcome?
A. They were responsible for the payment.
Q. They were or were not?
A. Were. The problem was -- the problem -- I know. I remember. They had the patient down as , that was the reason for the mistake. When I straightened it out that it was --

that was the reason for the improper payment. Under patient name, I remember, it was instead of . Okay?

Put that over here (indicating)?

Q. Yes.

Attached to your chart appears to be, in a sterile packet, a tooth.

A. That is the crown that was removed on -- hold on, . That would be the original crown on number 6, the one we had to remove for the fracture.

Q. Do you typically keep crowns that are removed?

A. If I have a plan of possibly using them again, yes. At the time, if you recall, going back to that visit, I said we didn't know what we were going to do at the time, so yes, I kept it.

Q. Doctor, co-pays that the patient made, did you provide him with receipts for each time he made a co-pay?

A. I would assume did that, yes.

Q. Do you have either in your

balance sheet, billing records or something to indicate the total amount of co-payments that the patient made?

A. Should be there someplace. These are not generally part of the patient's chart. I just took them with me.

Q. Where would you find that information if you were looking for it?

A. It would probably be on an index card or a copy of the index card.

Q. That would be in your chart?

A. In the chart only for --

MS. : He's asking if you can look at the index card or whatever you have to determine what co-payments were made.

A. Payments were on

Q. That's all right, Doctor, you don't have to read them.

Does that index card indicate the co-payments that were made?

A. Yes.

MR. OGINSKI: Just make me a

full copy of everything in there.

MS. : Okay.

Q. Doctor, on any of the X-rays that you have in your chart, did you observe any evidence of bone loss to any part of Mr. 's mouth, teeth --

MS. : Read back the question --

MR. OGINSKI: I'll rephrase it.

Q. On any of the X-rays that you have, did you observe any evidence of bone loss at any time?

A. Yes. There was evidence of bone loss on the original X-rays he came in with from the other dentist, and they remained stable on subsequent bitewing X-rays.

Q. Where did you observe -- what part of his mouth did you observe the bone loss?

A. In the upper posterior where the -- the lower posterior where the tooth was extracted, but not to a level where you would say he had significant periodontal disease.

Q. Which positioning --

A. 19 -- well, 19 was extracted, there was a little area. And on 14, which would be above it.

Again, you know...

Q. These observations, Doctor, you mentioned that they were stable?

A. They were not associated with what I was considering active periodontal disease.

Q. Did you ever observe any bone loss in the areas of teeth numbers 6 through 11?

A. Only where the crown lengthening was done. It's not bone loss, but intentional removal.

Q. That would be on number 10 and 11.

A. Correct.

Q. Other than the intentional crown lengthening procedures, did you observe any naturally occurring bone loss --

A. No.

Q. Is it your opinion, Doctor,

within a reasonable degree of dental probability that the treatment you provided to Mr. for the bridge, for the fixed bridge represented good and accepted dental practice?

A. Yes.

MS. : Over objection.

A. Yes.

Q. Is it your opinion within a reasonable degree of dental probability that the treatment you provided with regard to the crown, specifically number 6, represented good and accepted dental practice?

MS. : Over objection.

A. Yes.

Q. Is it your opinion, Doctor, that the charting for the patient's visits represent good and accepted dental practice?

MS. : Over objection.

[Continued on the following page to allow for signature line and jurat.]

A. Possibly not.

MR. OGINSKI: Thank you, Doctor.

[Time noted: 12:29 p.m.]

_____

Subscribed and sworn to
before me this_____day
of_____, .

_____
Notary Public

I N D E X

E X H I B I T S

[Attorney from has retained all exhibits.]

REQUESTS

Page	Line	Description
120	2	Copy of everything in chart

CERTIFICATION

I, , a Notary Public for and within the State of New , do hereby certify:

That the witness(es) whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this th day of

_____

* * *

ERRATA SHEET

NAME OF CASE:
DATE OF DEPOSITION:
NAME OF DEPONENT:

PAGE	LINE (S)	CHANGE	REASON

SUBSCRIBED AND SWORN TO BEFORE ME
THIS DAY OF , .

_____ _____
(NOTARY PUBLIC) MY COMMISSION EXPIRES: