

DE-IDENTIFIED PRE-TRIAL DEPOSITION TESTIMONY OF
A GENERAL DENTIST IN A FAILURE TO PROPERLY
RECOGNIZE DENTAL DECAY

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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.

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APPEARANCES:

GERALD M. OGINSKI, ESQ.
Attorneys for Plaintiffs
25 Great Neck Road, Suite 4
Great Neck, New York 11021

Attorneys for Defendant

BY:

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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.

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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

1
2 a patient to treat whatever condition is
3 necessary or asked for.

4 Q. When do you formulate a
5 treatment plan?

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

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

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

14 Q. How do you formulate a treatment
15 plan?

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

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

24 A. Yes.

25 Q. -- what you believe they should

1

2 have?

3 A. Yes.

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

9 A. Generally, no.

10 Q. Tell me why.

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

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

21 A. Yes.

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

25 A. The treatment that's going to be

1
2 performed and the fees involved. If
3 there's an insurance payment, we will
4 provide an approximation of the fees from
5 the insurance company and the co-payments
6 necessary, or wait for the insurance
7 company -- send the form to the insurance
8 company for pre-estimate of payments or
9 benefits, and then proceed from there.

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

14 A. Usually, yes.

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

18 A. Yes.

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

24 A. Yes, it is.

25 Q. Now, you're licensed to practice

1
2 dentistry in the State of New ,
3 correct?

4 A. .

5 Q. How long have you been in
6 practice?

7 A. Since . August of ' .
8 July of

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

11 A. No.

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

14 A. No.

15 Q. Has it ever been revoked?

16 A. No.

17 Q. Are you on staff at any
18 hospital?

19 A. No.

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

23 A. A study group.

24 Q. Other than a study group?

25 A. No.

1

2 Q. A national body of dentists?

3 A. No.

4 Q. Have you published anything in
5 the field of dental medicine?

6 A. No.

7 Q. Is it important to perform a
8 dental examination on a patient when you
9 see them for the first time?

10 A. Depends on the circumstance.

11 Q. Let's assume the patient is not
12 coming in for an emergency visit and
13 they're coming in to seek treatment for a
14 particular condition.15 A. A particular condition or a
16 general checkup? Sorry.17 Q. Not a problem. I'll rephrase
18 it.

19 A. Thank you.

20 Q. If a patient comes in for a
21 general checkup, do you agree it's
22 important to perform a dental exam?23 A. That's the proper procedure,
24 yes.

25 Q. Even if they come in with a

1
2 specific complaint, it's also important to
3 perform an exam at that time, correct?

4 A. Again, depends on the situation.

5 Q. Tell me what you mean.

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

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

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

1
2 general deviations, something swollen,
3 something obvious on the face. Examine the
4 lymph nodes and TMJ area by palpation. If
5 I find that there's a TMJ problem or
6 something like that, I focus on that one
7 area and then proceed with the rest of the
8 examination. That would include checking
9 the lips, the tongue, under the tongue,
10 having the patient stick their tongue out,
11 looking -- having them -- examine the
12 palate area, cheeks, and then proceed with
13 tooth examination.

14 Q. What does your tooth examination
15 consist of?

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

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

1
2 to proceed forward, do you ever have them
3 sign a form, either a consent form or
4 something else agreeing to your treatment
5 plan?

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

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

13 A. Yes.

14 Q. Tell me why you do that.

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

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

25 A. Yes.

1

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

4 A. Depends on your definition of
5 "thorough."

6 Q. How would you describe it?

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

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

12 A. Again, depends on the level of
13 detail.

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

19 A. No.

20 Q. -- performing treatment?

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

23 A. Yes.

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

1

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

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

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

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

15 Q. Correct.

16 A. Accurate, yes.

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

21 MS. : Note my objection.

22 You can answer.

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

25 Q. No.

1

2 A. Because that's inaccurate
3 information.

4 MS. : Listen to the
5 question.

6 Can you read back the question.

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

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

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

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

23 Q. Why do you do that?

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

1
2 mouth.

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

7 MS. : Note my objection.

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

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

18 A. No.

19 Q. Tell me why.

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

1

2 absolute. No, the answer is no.

3

4 Q. In the event you perform a
5 periodontal examination, as part of your

6 exam, would you agree that failure to

7 record that information and what you

8 observed would be a departure from good and

9 accepted dental practice?

10

MS. : Note my objection.

11

You can answer over objection.

12

A. Repeat that, please.

13

Q. Sure.

14

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

16

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

18

MS. : That's not the
19 question.

20

Read back the question.

21

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

23

A. Yes.

24

Q. Tell me why.

25

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

1

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

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

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

16 A. Yes.

17 Q. And why do you do that?

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

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

1

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

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

12 MS. : Note my objection.
13 I believe you did ask this, but
14 you can answer over objection.

15 A. I'm sorry, please.

16 Q. I'll rephrase it.

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

23 A. No.

24 Q. Tell me why.

25 A. Do I have an opinion?

1

2 Q. Do you have an opinion --

3 A. Yes, I have an opinion.

4 Q. What's your opinion?

5 A. Again, every patient presents a
6 different circumstance. Again, there are
7 no absolutes. It's the dentist's judgment
8 in how far a treatment, how far an
9 examination are determining factors.

10 Q. As part of a comprehensive
11 examination, is it important for you to
12 evaluate whether or not a patient has
13 cavities or caries?

14 A. Yes.

15 Q. Why?

16 A. As part -- again -- I'm sorry,
17 rephrase the question.

18 Q. When you do your comprehensive
19 examination, you mentioned that it's
20 important for you to determine if the
21 patient has any cavities or caries,
22 correct?

23 A. Correct.

24 Q. Why is that important for you?

25 A. If they need to be -- caries

1
2 generally would need to be treated.

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

5 MS. : That minute that
6 he sees the cavity?

7 MR. OGINSKI: I'll rephrase.

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

11 A. Yes.

12 Q. Why do you chart that?

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

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

18 A. Yes.

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

21 A. Distal.

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

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

1

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

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

9 A. Yes.

10 Q. Again, why do you do that?

11 A. Same reason.

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

15 A. Yes.

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

21 MS. : Note my objection.

22 You can answer over objection.

23 A. Yes.

24 Q. Tell me why.

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

1

2 Q. Yes.

3 A. It's standard charting. It's
4 how you keep your record of what is
5 existing in the patient's mouth.6 Q. Would the same be true for
7 observing caries on an X-ray that are not
8 charted?

9 A. I don't understand.

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

15 MS. : Note my objection.

16 You can answer over objection.

17 A. Yes.

18 Q. Would that be the same reason as
19 your prior answer, that it's standard
20 practice to do so?21 A. That's how you -- it's so you
22 have your information of what you're going
23 to be treating, what needs to be treated in
24 the patient's mouth.

25 MS. : Listen to the

1

2 question and answer the question.

3

THE WITNESS: I'm sorry.

4

MS. : It's okay.

5

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

8

A. Yes.

9

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

12

MS. : What are the

13

causes for why the bridge is loose?

14

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

16

MS. : If you can attest

17

18 to the possible causes for why a bridge
19 would be loose.

20

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

24

Q. Let's start with the teeth

25

attached and then I'll ask it without.

1

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

4 Q. Okay.

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

7 THE WITNESS: May I? To answer
8 the question.

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

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

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

25 Q. The type of cement that is used

1
2 to attach a fixed bridge, can you describe
3 that cement or what it's called?

4 MS. : In any case?

5 MR. OGINSKI: In general.

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

10 MR. OGINSKI: Yeah.

11 MS. : What permanent
12 cement --

13 A. Glass ionomer.

14 Q. Is the temporary cement
15 different than the permanent?

16 A. Yes.

17 Q. What do you call that?

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

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

1

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

4 Q. Correct.

5 A. Bruxism.

6 Q. Define.

7 A. Heavy grinding on the teeth.

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

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

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

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

21 MS. : The possible
22 dental reasons?

23 MR. OGINSKI: Yes.

24 MS. : Because there are
25 other reasons.

1

2 MR. OGINSKI: I know. Of
3 course.

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

7 MR. OGINSKI: Correct. That's
8 fine.

9 MS. : Do you understand?

10 A. Dental reasons.

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

14 A. Infection, food impaction, poor
15 home care.

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

18 A. Improper or inadequate or
19 nonexistent tooth brushing, flossing.

20 General home care.

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

1

2 A. For me -- clarification, please?

3 You're asking --

4 MS. : If you don't

5 understand the question --

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

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

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

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

22 A. Yes.

23 Q. How do you do that?

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

1
2 breath issue, whether it's an infection,
3 you see that fairly easily without an
4 in-depth, severe -- if they're having a bad
5 breath issue, it's probably something
6 that's pretty observe...

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

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

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

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

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

25 A. A patient --

1

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

4 MR. OGINSKI: I'll rephrase it.

5 MS. : Okay.

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

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

12 Q. Correct.

13 A. We recommend every six months
14 for a cleaning.

15 Q. Is that considered prophylaxis or
16 prophylaxis?

17 A. Yes.

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

20 A. Other than the examination
21 which --

22 Q. Yes.

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

1

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

6 A. Yes.

7 Q. What do you do --

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

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

17 A. No.

18 Q. Did you do the cleanings?

19 A. Yes.

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

1

2 A. Yes.

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

6 A. If there was a significant
7 observation, yes.

8 Q. Is that part of the charting
9 process?

10 A. Yes.

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

16 A. Yes.

17 MS. : Note my objection.

18 A. Yes.

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

22 A. Depends on the patient and the
23 circumstance.

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

1

2 to , unless I indicate otherwise.

3

4 During that time, were there

5 occasions when you would refer patients out

6 to a periodontist?

7 A. Yes.

8 Q. Did you know a Dr.

9 ?

10 A. Yes.

11 Q. Was he one of the periodontists

12 who you referred patients to?

13 A. Yes.

14 Q. If you sent a patient to him,

15 typically, would he write a note to you

16 about what he observed and what he did for

17 the patient?

18 A. Yes.

19 Q. If you had a question, you could

20 pick up the phone and call him?

21 A. Yes.

22 Q. At some point during Mr.

23 care and treatment, you referred him to

24 Dr. , correct?

25 A. Yes.

26 Q. Tell me why you referred him to

1

2 Dr.

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

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

14 A. Yes.

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

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

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

23 A. I guess it's -- number 6 through
24 11.

25 Q. Doctor, since you're referring

1
2 to things within your chart, just tell me
3 what you're referring to, please.

4 A. The visit date?

5 MS. : What are you
6 looking at?

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

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

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

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

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

20 Q. The page that you're looking at,
21 the first starting date is February what,
22 , ?

23 A. Yes.

24 Q. The last date written on that
25 page is ?

1

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

4 Q. I understand.

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

8 A. Yes.

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

11 A. No.

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

16 MS. : Yes or no, did
17 you --

18 A. Yes, they're in the chart.

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

22 A. No.

23 Q. What is a full mouth series?

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

1

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

4 A. No.

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

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

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

17 Q. What is a Panorex film?

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

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

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

25 Q. How frequently do you take

1

2 bitewings of patients for checkups?

3 A. Recommended to the patient once
4 a year.

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

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

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

14 A. No.

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

17 A. Yes.

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

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

1
2 accept the parameters of the insurance
3 plan.

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

8 A. Yes.

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

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

18 MR. OGINSKI: I'll rephrase it.

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

1

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

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

11 MS. : Could you read
12 back the question.

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

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

17 MR. OGINSKI: In general.

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

1

2 Q. Can it also lead to bone loss?

3 A. The only time it would probably
4 lead to bone loss, only if there was food
5 impaction or periodontal infection due to
6 the decay.

7 Q. How would you know, Doctor, if
8 there was decay under the bridge? How
9 would you diagnose that?

10 A. Well, can I clarify this?

11 Q. Sure.

12 A. If you're talking about a lower
13 tooth, it would be under the bridge, an
14 upper tooth would be above the bridge.

15 Q. You're right. I apologize.

16 A. The word is apical to the
17 bridge, is the proper term.

18 Q. How would you determine if there
19 was decay apical to the bridge or above the
20 bridge or in the lower case, below the
21 bridge?

22 A. An X-ray or exploring -- using a
23 dental explorer. Or clinical observation,
24 if it's, you know, easy to see.

25 Q. Are you able to see decay under

1
2 a bridge that is still within the patient's
3 mouth?

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

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

11 A. To see decay?

12 Q. Yes.

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

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

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

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

1

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

5 A. Yes.

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

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

10 Q. That's number 6 through 11?

11 A. Correct.

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

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

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

23 A. No.

24 Q. Tell me why --

25 A. We just discussed the front --

1
2 we only looked at the front teeth. That
3 was his interest at the time.

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

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

8 MR. OGINSKI: I'll rephrase.

9 Q. Did you formulate a treatment
10 plan?

11 A. Yes, replace the front bridge.

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

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

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

23 A. It may be additional posts or
24 root canals.

25 Q. Did you specify which particular

1
2 teeth may need additional treatment?

3 A. No.

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

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

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

12 A. No.

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

15 A. Correct.

16 Q. And you have those, I believe?

17 A. Uh-huh.

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

20 A. 12/9/ .

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

23 A. Yes.

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

1

2 about the condition of Mr. 's teeth?

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

5 Q. Which ones in particular?

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

8 Q. Any others?

9 A. And number 8.

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

13 A. No.

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

17 A. I don't remember.

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

20 A. No.

21 Q. Did you do any periodontal
22 charting?

23 A. No.

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

1

2 A. No.

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

6 A. No.

7 Q. Is there any reason why you did
8 not?

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

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

17 A. I did not give him a timeframe.

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

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

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

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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

1

2 him a compliant patient?

3 A. Reasonably, yes.

4 Q. Were there any occasions where

5 Mr. 's wife, , accompanied him

6 to the office?

7 A. I'm assuming she was probably
8 there at some point. Generally she wasn't.9 Q. During the course of time that
10 you were caring for , did you have
11 any conversations with his wife, with ?

12 A. Not that I recall.

13 Q. Were there occasions when
14 Mr. would come into your office for
15 emergency visits because of a problem?16 A. You have to define an emergency
17 in this case.

18 Q. An unscheduled visit.

19 A. An adjustment?

20 Q. No. An unscheduled visit.

21 A. Yes.

22 Q. Why would he come in for an
23 unscheduled visit?24 A. Generally for an adjustment on
25 the occlusion or if the bridge might have

1
2 been loose.

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

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

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

12 MS. : A memory
13 independent of this chart?

14 MR. OGINSKI: Yes.

15 MS. : Do you have --

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

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

21 A. Wouldn't venture a guess.

22 Q. Would it be more than five?

23 A. Probably, yes.

24 Q. More than 10?

25 A. Probably not.

1

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

5 A. That's what we were just
6 answering.

7 Q. I asked you about the loose
8 bridge.

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

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

15 A. Yes.

16 Q. And would you --

17 A. Within limits of the office
18 availability.

19 Q. Of course.

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

1

2 A. Sometimes no.

3 Q. Why not?

4 A. Office -- general -- that's the
5 way I do things.6 Q. As you're looking at your
7 patient chart in front of you, Doctor, were
8 there instances where the patient came to
9 your office for an unscheduled visit,
10 whether it was for a loose bridge or an
11 adjustment on the occlusion for which you
12 did not record the fact that he was
13 present?

14 A. Yes.

15 Q. How many times did you do that?

16 A. I don't know. Can't recall.

17 Q. As you sit here now, how are you
18 able to determine what treatment you
19 rendered to Mr. on any of those
20 occasions for those unscheduled visits
21 without having the benefit of recording
22 that information?

23 MS. : Note my objection.

24 He never testified that he could
25 tell you what he did on any of those

1

occasions.

2

3

MS. : That's what I'm

4

asking.

5

MR. OGINSKI: I'll rephrase it.

6

Q. Without having the benefit of

7

recorded information of when Mr. came

8

for an unscheduled visit and what you did

9

for him on any of those visits, are you

10

able to tell me today what it was that you

11

did on each and every one of those

12

unscheduled visits?

13

A. No.

14

Q. Are you able to determine which

15

visit represented a complaint of a loose

16

bridge, compared to an adjustment for the

17

occlusion?

18

A. No.

19

Q. Are you able to tell me if any

20

of those unscheduled visits related to caps

21

or crowns that had fallen out?

22

MS. : Are you able to

23

say whether any of the visits that

24

aren't here concern caps or crowns

25

which had fallen out?

1

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

4 MR. OGINSKI: Yes.

5 A. No.

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

9 A. No.

10 Q. Why not?

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

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

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

1

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

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

8 A. Yes.

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

12 MS. : Note my objection.

13 You can answer.

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

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

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

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

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

1
2 reached between you and Mr. after the
3 first visit as to what the course of
4 treatment would be or what the proposed
5 treatment plan would be?

6 MS. : After the first
7 visit?

8 MR. OGINSKI: At the first
9 visit.

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

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

18 A. I don't recall.

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

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

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

1

2 entire note, please.

3 A. 3/8/ , remove 6 through 11. 10

4 and 11 excavate caries below gumline.

5 Number 10 -- number 2 flexing flank with

6 composite core. Number 11 and number 3,

7 fiber core and build up. Both require

8 crown lengthening by periodontist. 6, 8

9 and 9 prep and temp. only. Next visit

10 after periodontal surgery for re-prep and

11 reevaluate for impressions.

12 Q. What appears to the right

13 side --

14 A. Two and a half carpules of red

15 is the Xylocaine -- Xylocaine two percent

16 with Epinephrine, one, colon, 100,000.

17 Q. On this visit, did you do a full

18 exam?

19 A. No.

20 Q. Tell me why not.

21 A. Mr. 's concern was strictly

22 the front teeth.

23 Q. You removed the fixed bridge?

24 A. Yes.

25 Q. You observed the cavities on 10

1

2 and 11?

3 A. Uh-huh.

4 Q. Did you repair those cavities?

5 A. Yes. They were excavated and
6 removed and then the teeth were built up.7 Q. Did you chart what part of the
8 teeth had the cavities?

9 A. No.

10 Q. Any particular reason why you
11 did not?12 A. Unlike posterior teeth, these
13 teeth are fairly conical or round in shape,
14 and you're removing all the decay and
15 having a fresh surface on the entire 360-
16 degree circumference of the whole tooth.
17 You're repairing the whole tooth in this
18 case.19 Q. You told me that looking at
20 Mr. 's X-rays from December , there
21 was also decay on tooth number 8.

22 A. Correct.

23 Q. Did you chart that?

24 A. No.

25 Q. Is there any reason why you did

1

2 not?

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

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

9 A. Didn't repair. You remove
10 caries.

11 Q. Thank you.

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

15 A. Yes.

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

18 A. Yes.

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

21 A. No.

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

24 A. No.

25 Q. Did Mr. have periodontal

1
2 disease?

3 MS. : On that visit?

4 MR. OGINSKI: Yes.

5 A. No, this wasn't --

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

10 A. In the area we treated, no.

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

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

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

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

1

2 a new bridge on the front.

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

6 A. No.

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

11 A. No.

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

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

19 Q. What would that be?

20 A. Total amount?

21 Q. Yes.

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

25 Q. Just tell me what it is you're

1

2 reading off of, Doctor.

3 A. A card with the patient's
4 payment records.5 Q. What was the agreement that the
6 two of you reached on that visit?7 A. That we would proceed with the
8 work as recommended.9 Q. For the amount that the
10 insurance would not cover, how would the
11 remainder be paid, if at all?12 A. Paid by Mr. or whatever the
13 insurance company would deduct from the
14 total balance, then we accepted the fees,
15 based on his insurance plan, the insurance
16 payments would be deducted from that and
17 his co-payments would be the balance.18 Q. Just so I understand, you would
19 accept the insurance payments, and any
20 co-pays he would have to pay as well.21 A. Yes. Totalling the fees as set
22 by the guidelines of his insurance.23 MS. : Can we take two
24 minutes?

25 MR. OGINSKI: Sure.

1

2 [A recess was taken.]

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

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

12 Q. What were the other
13 possibilities you mentioned?

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

17 Q. What was Mr. 's decision?

18 A. Re-do the bridge.

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

22 A. No.

23 Q. -- prior to coming to you?

24 A. No.

25 Q. Now, did you do a cleaning on

1
2 that --

3 A. No.

4 Q. -- visit on March 8, ?

5 MS. : Let him ask the --

6 THE WITNESS: I'll wait.

7 A. No.

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

10 Thank you.

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

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

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

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

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

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

1
2 working on up until that point?

3 A. No.

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

8 A. Yes.

9 Q. Continue with the next note.

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

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

17 MS. : On March 8th?

18 MR. OGINSKI: Yes, March 8th.

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

23 Q. What's the next note you have?

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

1

2 Q. What is that?

3

A. It's a bite registration to
4 determine where to set the teeth.

5

Q. What's the next note?

6

A. . Try in porcelain, sent
7 to adjustment.

8

Q. What does that mean?

9

A. Went to the lab to make -- back
10 to the lab to make corrections.

11

Q. Did you have a lab in your
12 office?

13

A. No.

14

Q. You would send it out to a
15 laboratory that you used?

16

A. Yes.

17

Q. Did you have multiple labs or
18 did you primarily use just one?

19

A. Primarily just one. There was
20 one other lab that I used, but in this
21 case, no.

22

Q. The next note?

23

A. Repaired temporary, at is
24 the date.

25

Q. What does that mean?

1

2 A. That's the date.

3 Q. When you say "repaired
4 temporary," what does that mean?5 A. Repaired the temporary,
6 something was probably broken or needed an
7 adjustment.8 Q. Does your note reflect which one
9 of those things it was?10 A. No. It just says repair
11 temporary.12 Q. Do you have any information as
13 you sit here now looking at this note today
14 what it was that needed to be repaired?

15 A. No.

16 Q. What's the next note, please?

17 A. , try in, sent to finish.

18 Q. Now, from up
19 until , did Mr. make any
20 unscheduled visits or appointments in your
21 office during that period of time?

22 A. I don't recall.

23 Q. Is there anything in these notes
24 that you have in front of you today that
25 would indicate that he made any unscheduled

1
2 visits for any reason whatsoever?

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

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

8 A. No.

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

14 A. It's possible.

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

21 A. Yes.

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

25 A. No.

1

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

4 A. Only for trying in the bridge.

5 Q. Tell me what you mean by that.

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

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

11 A. No.

12 Q. I'm sorry?

13 A. No.

14 Q. You have a packet, right --

15 A. They're not in there.

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

19 A.

20 Q. What are those little packets?

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

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

1

2 A. .

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

5 A. Two. I'm sorry. Seven.

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

8 A. Yes.

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

11 A. Not in the packets.

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

15 A. Right.

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

19 A.

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

22 A. One.

23 MR. OGINSKI: Off the record.

24 [Discussion held off the

25 record.]

1

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

7 A. Right here (indicating).

8 MS. :

9 MR. OGINSKI: I apologize.

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

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

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

17 A. Right.

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

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

1

2 wrong day.

3 Q. Read that note, please.

4 A. , number 6.

5 Q. That refers to tooth number 6?

6 A. Tooth number 6. Number two

7 access post, I erased the word Ticor,

8 T-I-C-O-R, because we changed to different

9 material. We went to composite core. Prep

10 and temp.

11 Q. Is it your belief, Doctor, that

12 the entry refers to the

13 X-ray?

14 A. Yes, it does.

15 Q. The X-ray that you're looking at

16 refers to which teeth?

17 A. Number 6.

18 Q. When you wrote down number 2

19 access post, what does that mean?

20 A. That's the actual post that was

21 put in the tooth, the brand and the size.

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

23 visit.

24 A. Okay.

25 Q. Can you read that, please.

1

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

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

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

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

17 A. No.

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

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

25 Q. Continue, please, to the next

1

2 note. .

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

6 Q. What does that mean?

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

9 Q. Yes.

10 A. Wear facets.

11 MS. : Chips?

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

17 Q. What's your next note, July?

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

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

23 A. Yes.

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

1
2 as to whether this will remain in his
3 mouth?

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

6 Q. Did it remain in his mouth?

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

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

12 A. Fractured post and distal
13 margin, something broke. Number 6 is not
14 part of a bridge. 6, 7 and -- 6 and 7 were
15 individual teeth, individual crowns. 8, 9,
16 10 and 11 were a bridge.

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

19 A. 6 and 7 were individual crowns.

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

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

25 MS. : Could you read

1

2 back his last answer.

3

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

6

7 Q. Let's continue, please.

8

9 A. Where are we.

10

11 Q.

12

13 A. Propy.

14

15 Q. What was observed on that date?

16

17 A. There were no unusual

18

19 observations at that point.

20

21 Q. Did you do scaling?

22

23 A. General scaling would be part of

24

25 a propy.

26

27 Q. Did Mr. have any

28

29 periodontal disease that you observed?

30

31 A. No.

32

33 Q. If you had made such

34

35 observation, would you have noted it?

36

37 A. Yes.

38

39 Q. If you felt that the periodontal

40

41 condition was severe enough, would you have

42

43 referred him to a periodontist for

44

45 treatment?

46

47 A. Yes.

1

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

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

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

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

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

20 A. , exam, prophylaxis was
21 crossed out, we didn't do it. Four
22 bitewings and one PAX.

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

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

1
2 seen him in five months, six months, so I
3 assume it was a regular visit.

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

8 MS. : Note my objection.

9 MR. OGINSKI: I'll rephrase it.

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

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

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

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

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

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

24 Q. Read your note, please.

25 A. It says fractured post --

1

2 Q. You can from exam.

3 A. Four bitewings and one PAX,
4 periapical X-ray.

5 Q. Go ahead.

6 A. Loose number 6, fractured post
7 and distal margin, one periapical X-ray in
8 addition to what we took. Remove post,
9 place acrylic temporary core. Recement
10 with temp. bond.

11 Q. That refers to --

12 A. Temporary cement.

13 Q. I know, but these two lines --

14 A. All number 6.

15 Q. Thank you.

16 Go ahead.

17 A. Treatment plan, number one, cast
18 post, slash, telescoping, reusable crown,
19 or number two, a new post and core and a
20 new crown.

21 Q. How did you determine that the
22 patient had a fractured post?

23 A. You took the crown that was
24 loose off and you could see it.

25 Q. At any time before then, did you

1
2 observe a fractured post?

3 A. No.

4 Q. During this examination, did you
5 do an exam of the remaining part of his
6 mouth?

7 A. Yes.

8 Q. And did you chart any
9 observations, other than what you recorded
10 in this note?

11 A. No.

12 Q. Did you observe any caries or
13 cavities on any of his teeth that you
14 recorded?

15 A. At that visit, no.

16 Q. Do you have a chart for making
17 such recordings or notes?

18 A. Yes.

19 Q. Do you have that with you?

20 A. Yes (indicating).

21 Q. The back of that page?

22 A. Uh-huh.

23 Q. Are there any notations at all
24 on the back of that page?

25 A. No.

1

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

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

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

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

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

18 A. Yeah.

19 Q. You said it should be ?

20 A. Yes.

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

24 A.

25 Q. Can you read that note, please.

1

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

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

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

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

16 A. , number 6, final
17 impression.

18 Q. That was for the crown?

19 A. Yes.

20 Q. What was the next visit, please?

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

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

1

2 A. No, that was the crown put in.

3 Q. Why do you use temporary bond --

4 A. Trying to observe the gumline.

5 Q. How long do you do that before
6 putting in permanent cement?

7 A. At least a week. Sometimes if
8 there are problems, you leave it as long as
9 you can and wait for the gum to heal.

10 Q. In your opinion, Doctor, was
11 there a particular problem as to why you
12 would need to wait in Mr. 's case?

13 A. Because of the fracture on the
14 distal of the margin, you want to see how
15 the area would heal.

16 Q. When would you want the patient
17 to return after putting in the crown with
18 the temporary cement?

19 A. Ideally we wait about two weeks.

20 Q. Did Mr. return in two
21 weeks?

22 A. No.

23 Q. From , up until
24 , did Mr. make any unscheduled
25 visits into your office for which you have

1

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

4 A. No.

5 Excuse me. Please repeat that.

6 Q. That was a bad question.

7 From , , until

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

12 A. Looking at the chart, no.

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

18 A. Yes.

19 Q. Can it be more than one?

20 A. Yes.

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

25 A. No.

1

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

6 A. Can you please repeat that.

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

9 MS. : If there were any.

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

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

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

17 Q. That would be for the crown.

18 A. Uh-huh.

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

21 A. No.

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

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

1
2 of his -- when we would adjust it, he would
3 come in for a slight adjustment here or
4 there, we would follow along to make it as
5 comfortable and proper as possible. These
6 would be very minor adjustments each time.

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

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

13 Q. How do you do that?

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

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

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

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

1

2 A. Yes.

3 Q. -- in order to adjust the bite?

4 A. Yes.

5 Q. When you say you can sometimes

6 adjust the opposing tooth, that would be

7 the tooth -- for example, 6 is on the top,

8 correct?

9 A. Yes.

10 Q. You would then adjust the tooth

11 directly beneath it on the bottom jaw?

12 A. Yes.

13 Q. In order to make it more

14 comfortable for the patient?

15 A. Yes. Correct. I didn't say I

16 did that.

17 Q. I understand.

18 A. That's a possibility.

19 Q. If you had made an adjustment to

20 the opposing tooth, would you have recorded

21 that?

22 A. Yes.

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

24 note you have.

25 A. . Loose number 8, number

1
2 10, immobile. Removed old bridge. Re-do
3 prep, temp. and impression.

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

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

14 Q. Did you determine why this
15 looseness was present?

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

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

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

1
2 syringes that they use into the crown and
3 see the area.

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

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

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

11 A. Correct.

12 Q. When you say re-do PTI?

13 A. Prep, temp. and impression.

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

16 A. I would have noted that.

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

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

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

23 A. No.

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

1

2 A. No.

3 Q. Did you record any observation

4 by Mr. of having bad breath?

5 A. No.

6 Q. Read your next note, please.

7 A. 11/14, cement 7, 8, 9, with

8 Fuji -- it should have been 8, 9, 10.

9 Q. Doctor,

10 A. No, , try in, sent to

11 finish.

12 Q. The try in was the temporary

13 bridge?

14 A. No, try in was a permanent

15 bridge, for a try in to make sure it fit

16 properly.

17 Q. And the next note, please?

18 A. Number , cement -- it

19 says 7, 8, 9, it should be 8, 9, 10, with

20 Fuji. Remove and recement posts and

21 core -- excuse me, post and crown number 6

22 with Fuji cement. Adjust occlusion number

23 6, reducing occlusal.

24 Q. You said cement 7, 8, 9 --

25 A. It was a mistake. It should be

1

2 8, 9, 10.

3 Q. Tell me why.

4 A. Why, that was the new bridge.

5 Q. So 7 is not part of the bridge?

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

7 10.

8 Q. Why was 6 addressed at this
9 point?10 A. It never had the permanent
11 cement put in. That was from back to 6/19,
12 he had the temp. on, and it was in from
13 them. It was never permanently cemented
14 until that date.15 Q. The cap on the number 6 -- the
16 crown on number 6 --

17 A. Same thing.

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

20 A. Yes.

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

25 A. No.

1

2 Q. It was just the --

3 A. Routine procedure.

4 Q. Relating back to the

5

6 A. Correct.

7 Q. -- temporary cement that was put

8 in. You're just putting in the permanent

9 cement here for 6.

10 A. Uh-huh.

11 Q. When you removed the crown on

12 number 6, did you observe any decay at that

13 point on 6?

14 A. I would have written that down

15 if I did. So the answer would be no.

16 Q. Going back to the last X-ray you

17 had taken on , the one X-ray.

18 A. Okay.

19 Q. Was there any evidence of decay

20 on that tooth on ?

21 A. No. It was a fracture, the

22 actual tooth had a fracture in it. We were

23 able to proceed and get further -- we were

24 able to get past the fracture and have a

25 good margin on the tooth.

1

2 Q. On , he had now had
3 a new post and core put in on tooth number
4 6?

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

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

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

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

18 A. Yes, same as we explained
19 before.

20 Q. What's your next note, please.

21 A.

22 Q. Go ahead.

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

1
2 squiggle here, that was not from
3 That was the following visit,

4 Q. So the adjust the occlusion
5 number 6 --

6 A. You see the squiggle there.

7 Q. That refers to

8 A. . Adjusted the
9 occlusion number 6, reducing the occlusal.

10 Q. Would you have done that if
11 Mr. had not made a complaint about his
12 bite?

13 A. If I were to see something in an
14 examination, you can sometimes tell if the
15 tooth has a little mobility when you bite
16 on it with your finger, do an exam, you
17 might be able to feel some motion, that
18 should indicate to me I should check the
19 bite on that.

20 Q. Is it possible that he made a
21 complaint about having a problem with his
22 bite that may have caused you to adjust
23 that?

24 A. He may have said something, I
25 don't recall.

1

2 Q. Continue, please.

3 A. Four bitewing X-rays. Exam,
4 prophyl. Next visit, observe number 6,
5 17 -- should have been 18, mesial, caries.6 Q. Where within the mouth is number
7 17?

8 A. 17 would be the wisdom tooth.

9 Q. Is this the first time you
10 made --11 A. It was supposed to be 18, not
12 17. It was incorrectly numbered.13 Q. You're looking now at the
14 X-ray --15 A. On this, yeah. I'm just
16 double-checking. 17 was incorrect. It was
17 18.

18 Q. What makes you believe that?

19 A. 17 is removed. Or never
20 existed.21 Q. Do you have any reason to know
22 why you wrote 17 instead of 18?

23 A. No.

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

1

2 X-rays?

3 A. No.

4 Q. Where are those X-rays?

5 A. I don't know.

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

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

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

16 A. Yes.

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

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

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

25 A. Correct.

1

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

14 Q. Just for the record, you're
15 looking at the full mouth series taken on
16 ?

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

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

22 THE WITNESS: Yes.

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

25 MS. : You mean a yellow

1

2 envelope.

3

MR. OGINSKI: Yes.

4

A. No.

5

Q. Do you have any knowledge as you

6

sit here today as to where those four

7

bitewing X-rays are?

8

A. No.

9

Q. Other than the observation you

10

made about number 17 having a carie, is

11

there any other observation you made about

12

those four X-rays?

13

A. No.

14

Q. Have you tried to locate those

15

particular missing X-rays?

16

A. Yes, I did.

17

Q. Just tell me what efforts you

18

made to try and find them.

19

A. We looked in the charts back

20

from that day, when we went back to the

21

appointment book and looked at whatever

22

charts may have been taken out that day.

23

We weren't able to find them.

24

Q. Let's go to your next note,

25

please.

1

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

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

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

9 Q. Why?

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

12 Q. I want your best dental
13 opinion --

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

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

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

1
2 for a tooth is the cement gives way before
3 the tooth fractures. The Max cement is
4 just a different brand of the same cement.

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

7 A. Yes.

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

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

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

15 A. Yes. Or it might have been
16 loose.

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

20 A. You skipped a couple of visits.

21 Q. I'm going to go back.

22 A. That's important.

23 Q. But at this point, on October
24 28, , when you recemented number 6 in,
25 had you formed an opinion as to why it had

1

2 come out again?

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

7 Q. Let's go back to the --

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

11 Q. Let's go to the
12 note.

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

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

20 A. Correct.

21 Q. What's the next visit?

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

1
2 Occlusion, slash, within normal limits.
3 Three periapical X-rays negative. Noted
4 patient said under stress. Gave take home
5 night guard kit, will observe.

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

8 A. Yes.

9 Q. Do you have those?

10 A. No.

11 Q. Do you know --

12 A. I don't know why.

13 Q. Thank you.

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

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

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

21 A. 6 through 11.

22 Q. That would be part of the
23 bridge.

24 A. Yes.

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

1

2 A. 6 through 11.

3 Q. When you wrote negative, what
4 did you mean?5 A. There was nothing observed --
6 nothing unusual would be observed. There
7 was no decay, no periodontal disease,
8 bridge sitting properly.9 Q. Did you make a search in
10 anticipation of coming here for those
11 missing X-rays?

12 A. Yes. Same search.

13 Q. Were you able to find any of
14 those?

15 A. No.

16 Q. Did you determine why Mr.
17 was experiencing bad breath?

18 A. No.

19 Q. Did you do anything to rule in
20 or rule out dental causes for his
21 complaints of bad breath?22 A. The X-rays that we took, which
23 turned out to be negative were looking for
24 periodontal disease or pocketing which we
25 did not find. The margins of the tooth

1
2 were not involved. Sometimes a poorly
3 fitting crown could trap food. That was
4 not the case.

5 Q. Then the next notation you have
6 is

7 A. Recement number 6.

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

11 A. Yes.

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

18 A. No.

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

23 A. Yes.

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

1
2 office during this a little more than
3 one-year period?

4 A. No.

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

9 A. No.

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

14 A. No.

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

19 A. No.

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

1

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

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

9 Q. I just want to understand your
10 answer --

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

17 Q. That would be on the bridge,
18 correct?

19 A. Yes.

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

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

1

2

3 Q. What did you learn at that
4 point?

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

7 Q. Did you learn why?

8 A. No. We don't ask either.

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

11 A. No.

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

14 A. No.

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

17 A. No.

18 Q. Do you know either of them
19 personally?

20 A. No.

21 [A recess was taken.]

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

24 A. Yes.

25 Q. And do you recall having a

1
2 conversation with him or --

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

6 MR. OGINSKI: Yes.

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

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

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

18 A. No.

19 Q. Did you ever have a conversation
20 with Mr. at any time after
21 ?

22 A. No.

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

1

2 A. No.

3 Q. When he went elsewhere?

4 A. No.

5 Q. Did you ever learn from anybody

6 except your attorney what treatment

7 Mr. had after he had left your office?

8 A. No.

9 Q. Did you learn from anyone, other

10 than your attorney, that Mr. had had

11 his upper teeth extracted?

12 A. No.

13 Q. Did you review any X-rays, other

14 than the ones that you brought with you

15 today, in preparation for today's

16 questioning?

17 A. No.

18 Q. Did you review any dental

19 literature, textbooks, journals, in

20 preparation for today?

21 A. No.

22 Q. Have you ever testified before?

23 A. In a deposition or in a court?

24 Q. Either one.

25 A. In a deposition.

1

2 Q. How many times?

3 A. Once.

4 Q. How long ago? Approximately.

5 A. Probably around

6 Q. Was that as part of a case where

7 a patient brought a lawsuit against you?

8 A. Yes.

9 Q. Other than that one time, did
10 you ever testify in court?

11 A. No.

12 Q. Have you ever testified as an
13 expert witness?

14 A. No.

15 Q. Where did you go to dental
16 school?

17 A.

18 Q. When did you graduate?

19 A.

20 Q. After completing dental school,
21 did you do anything else after that in
22 terms of furthering your education? Your
23 dental education.

24 A. My internship?

25 Q. If there was.

1

2 A. No.

3 Q. Did you go into private practice
4 at that point?

5 A. Yes.

6 Q. Have you been in private
7 practice continuously up until today?

8 A. Yes.

9 Q. In , Doctor, , ,
10 what was the name of your office?

11 A. .

12 Q. Did you have a corporation?

13 A. No.

14 Q. You were a solo practitioner?

15 A. Yes.

16 Q. During the two-year period,
17 approximately, that you were treating
18 Mr. , two-and-a-half-year period, were
19 there occasions when Mr. had scheduled
20 visits for which you had to cancel because
21 of personal reasons?

22 A. It's possible.

23 Q. During the course of Mr. 's
24 care and treatment, did you have any issues
25 that you recall now with the lab as far as

1
2 being able to complete the work that you
3 were asking them to complete in a timely
4 fashion?

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

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

12 A. No.

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

17 A. Yes.

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

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

1
2 place.

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

5 Could you read back the
6 question.

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

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

13 A. I don't recall that.

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

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

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

1
2 using it?

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

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

8 A. No, I did not.

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

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

16 A. Yes.

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

21 A. Correct.

22 Q. If you can look, please,
23 specifically to the first one that we're
24 looking at, it says treatment on

25 , is that right?

1

2 A. .

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

5 A. Yes.

6 Q. Where is that?

7 A. , number 14, posterior
8 composite.

9 Q. Very good.

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

13 A. .

14 Q. Correct, you have corresponding
15 treatment there.

16 A. Yes.

17 Q. Good. Next page, please.

18 A.

19 Q. What treatment is indicated on
20 there --21 A. Exam, four bitewings and one
22 periapical X-ray.

23 Q. The next?

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

1

2 Q. Next?

3 A. That's the same.

4 Q. Same date?

5 A. That's the original copy and
6 then the computerized form and the dates.7 Q. There's a letter from the
8 patient's insurance company about an
9 overpayment of a thousand dollars. Just
10 what's the date on that letter, please?

11 A. .

12 Q. Do your records indicate whether
13 the insurance company was ever repaid for
14 that overpayment?15 A. There was not a mistake. We
16 went back and forth with them for a while.

17 Q. What was the ultimate outcome?

18 A. They were responsible for the
19 payment.

20 Q. They were or were not?

21 A. Were. The problem was -- the
22 problem -- I know. I remember. They had
23 the patient down as , that was the
24 reason for the mistake. When I
25 straightened it out that it was --

1
2 that was the reason for the improper
3 payment. Under patient name, I remember,
4 it was instead of . Okay?
5 Put that over here (indicating)?

6 Q. Yes.

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

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

13 Q. Do you typically keep crowns
14 that are removed?

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

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

23 A. I would assume did that,
24 yes.

25 Q. Do you have either in your

1

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

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

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

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

12 Q. That would be in your chart?

13 A. In the chart only for --

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

18 A. Payments were on

19

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

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

24 A. Yes.

25 MR. OGINSKI: Just make me a

1

2 full copy of everything in there.

3

MS. : Okay.

4

Q. Doctor, on any of the X-rays

5

that you have in your chart, did you

6

observe any evidence of bone loss to any

7

part of Mr. 's mouth, teeth --

8

MS. : Read back the

9

question --

10

MR. OGINSKI: I'll rephrase it.

11

Q. On any of the X-rays that you

12

have, did you observe any evidence of bone

13

loss at any time?

14

A. Yes. There was evidence of bone

15

loss on the original X-rays he came in with

16

from the other dentist, and they remained

17

stable on subsequent bitewing X-rays.

18

Q. Where did you observe -- what

19

part of his mouth did you observe the bone

20

loss?

21

A. In the upper posterior where

22

the -- the lower posterior where the tooth

23

was extracted, but not to a level where you

24

would say he had significant periodontal

25

disease.

1

2 Q. Which positioning --

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

6 Again, you know...

7 Q. These observations, Doctor, you
8 mentioned that they were stable?9 A. They were not associated with
10 what I was considering active periodontal
11 disease.12 Q. Did you ever observe any bone
13 loss in the areas of teeth numbers 6
14 through 11?15 A. Only where the crown lengthening
16 was done. It's not bone loss, but
17 intentional removal.18 Q. That would be on number 10 and
19 11.

20 A. Correct.

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

24 A. No.

25 Q. Is it your opinion, Doctor,

1
2 within a reasonable degree of dental
3 probability that the treatment you provided
4 to Mr. for the bridge, for the fixed
5 bridge represented good and accepted dental
6 practice?

7 A. Yes.

8 MS. : Over objection.

9 A. Yes.

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

16 MS. : Over objection.

17 A. Yes.

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

22 MS. : Over objection.

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

25 A. Possibly not.

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MR. OGINSKI: Thank you, Doctor.

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

Subscribed and sworn to
before me this _____ day
of _____, _____.

Notary Public

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I N D E X

| WITNESS | EXAMINATION BY | PAGE |
|---------|----------------|------|
| | Mr. Oginski | 4 |

E X H I B I T S

| PLAINTIFF'S | DESCRIPTION | PAGE |
|-------------|-------------|------|
| Exhibit 1 | Chart | 4 |

[Attorney from has retained all exhibits.]

R E Q U E S T S

| Page | Line | Description |
|------|------|-----------------------------|
| 120 | 2 | Copy of everything in chart |

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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

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ERRATA SHEET

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

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SUBSCRIBED AND SWORN TO BEFORE ME
THIS DAY OF , .

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

