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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF QUEENS

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4 ,
5 Plaintiffs,

6
7 - against -

8 , D.D.S. &
9 , P.C.,
10 Defendants.

- - - - - x

11

12 April 27, 2007
13 10:20 a.m.

14

15 DEPOSITION of , D.D.S., one of
16 the Defendants herein, taken by the Plaintiff,
17 pursuant to Order, held at the offices of ,
18 , ESQS.,
19 , New York, before Karin Genalo, CSR, a
20 Notary Public of the State of New York.

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2 LAW OFFICES OF GERALD M. OGINSKI, LLC
3 25 Great Neck Road
4 Great Neck, New York 11021
5 Attorneys for Plaintiff

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7 , , ESQS.

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9 New York, New York 10005
10 Attorneys for Defendants

11 BY: , ESQ.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between counsel 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 the form, or to move to strike any testimony at this examination are reserved; and in addition, the failure to object to any question or to move to strike testimony at this examination shall not be a bar or waiver to make such a motion at, and is reserved for 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 examination to counsel, shall not be deemed a waiver of the rights provided by Rules 3116 and 3117 of the C.P.L.R., and shall be controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED AND AGREED that this examination shall be furnished to the attorney for the witness being examined without charge.

* * * *

, called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. OGINSKI:

Q. Please state your name for the record.

A. .

Q. Where do you reside?

MR. : I'll accept

service for him.

Give your office address.

A. ,
Flushing, New York 11354.

Q. Good morning, Doctor.

You are a dentist, correct?

A. Yes.

Q. You're licensed to practice

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dentistry in the State of New York?

A. Yes.

Q. Are you licensed in any other state?

A. No.

Q. Would you agree, Doctor, in the practice of dentistry that it is

9 important to preserve natural teeth?
10 A. Definitely.
11 Q. Why?
12 A. Because no artificial tooth
13 can replace natural teeth. It's obvious,
14 no matter how good it is, still natural
15 teeth are the best thing, yes.
16 Q. I'm going to ask you some
17 general questions about dentistry.
18 When you treat a cavity,
19 what do you do to treat a cavity, what
20 treatments are available to you? That's
21 a general question.
22 A. Just remove the decays and
23 give the cavity a shape so it can hold
24 the filling material and then fill it.
25 Q. And you usually fill it with

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2 an amalgam filling?
3 A. Usually we put a base to
4 protect the pulp and then whatever
5 amalgam or composite whatever is
6 appropriate.
7 Q. What is root canal?
8 A. Root canal is removing the
9 nerves out of the tooth and filling the
10 canals. When the decay reaches the pulp,
11 every tooth has a pulp, it has different
12 number of roots and different number of
13 nerves, if a tooth has one root it has
14 one nerve, two roots, two nerves, three
15 roots, three nerves.
16 Q. How do you determine how
17 many nerves there are in a particular
18 tooth?
19 A. That's common knowledge.
20 MR. : Wait until he
21 finishes his whole question.
22 A. I'm sorry.
23 No, that's what we were
24 taught in school, every tooth -- you
25 know, usually the anterior teeth have one

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1
2 root, the bicuspid have two and the
3 molars have three, sometimes four.
4 Q. And have you, in your
5 career, performed a procedure known as an
6 apicoectomy?
7 A. Yes.
8 Q. What is that?
9 A. Apicoectomy is usually when
10 a tooth has a root canal or has an
11 abscess at the end of the root, at the
12 apex we call it, and then it does not go
13 away by regular treatment, so we open the

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7

14 bone, cut the root out and sealing it
15 with amalgam. Seal the ends of the root,
16 it's called root --

17 MR. : Off the record.
18 (A discussion was held off
19 the record.)

20 Q. What is an extraction,
21 Doctor?

22 A. An extraction is when you
23 remove a tooth from the mouth.

24 Q. And would you agree that in
25 the practice of dentistry an extraction

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2 would be the last measure that you would
3 use in order to treat a particular tooth
4 or a condition?

5

A. Well, sometimes it's the
6 only way. If your tooth is beyond repair
7 there is no other way, you have to remove
8 the tooth.

9 Q. But generally out of your
10 arsenal of treatments available to you to
11 treat teeth an extraction would be the
12 last resort?

13 A. Would be the last resort,
14 right.

15 Q. Doctor, when you perform a
16 dental examination on a patient is it
17 important for you to indicate in your
18 notes not only that you performed an
19 examination but to record your findings?

20 A. We usually do that, yes.

21 Q. Why is that important?

22 MR. : Wait a minute.

23 You have to let him answer
24 the question.

25 MR. OGINSKI: I'm sorry.

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2 Q. Did you want to finish?

3 A. What I usually do when I do
4 examination, I record the preexisting
5 conditions, whatever is there first, like
6 if there is a tooth missing or a tooth
7 has a root canal or has a crown or
8 something important like that, not a
9 filling, you don't record the fillings
10 existing, and then whatever is necessary
11 to be done. And then I discuss it with
12 the patient I tell them this tooth needs
13 a filling, this one needs --

14 Q. My question is a little more
15 basic than that.

16 When you do an examination,
17 you indicate in the patient's note you
18 did an examination --

8

9

19 A. Right.
20 Q. -- correct?
21 A. Right.
22 Q. And as part of your
23 examination after you finish it, at some
24 point after you make notes about what
25 your findings were, correct?

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2 A. Right.
3 Q. And why is it important to
4 document that information?
5 A. For patient's knowledge so
6 he knows what's going on and for me to
7 know what I'm doing.
8 Q. And is it also important for
9 you so that when the patient returns to
10 your office you know exactly what you did
11 in the past visits?
12 A. Right.
13 Q. Or if any other doctor were
14 to look at your notes they would know
15 exactly what was done?

10

16 A. Exactly.
17 Q. In situations where you
18 extract a tooth, is there a requirement
19 to replace that empty space with
20 something artificial?
21 MR. : Just --
22 MR. OGINSKI: It's a general
23 question.
24 MR. : A requirement by
25 some agency or a requirement by some

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2 dental need?
3 Q. By some dental need or is it
4 good dental practice to replace an
5 extracted tooth with an artificial either
6 device or artificial tooth?
7 A. We usually do that, right,
8 yes.
9 Q. Why is that good practice?
10 A. Well, because it makes the
11 patient easy to chew his food and gives
12 him more ability to, chewing surface we
13 call it. If it's an empty spot in the
14 mouth it's a little difficult.

11

15 Q. If there is a missing tooth
16 because of an extraction or the patient
17 lost the tooth, does it have or can it
18 have an affect on the adjacent teeth in
19 terms of structure and support?
20 A. Not structure, but usually
21 they move. Depending on what tooth is
22 extracted, the adjacent teeth usually
23 shift either backwards or forward,

24 whatever the patients -- or sometimes the
25 opposing tooth moves also, like if a

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2 tooth is missing on the bottom, the top
3 one will usually grow into that spot.

4 Q. Are you familiar with the
5 term periodontal charting?

6 A. Yes.

7 Q. What does that mean, Doctor?

8 A. It means to, I'm not a
9 periodontist, but usually to record the
10 depth of the pockets that's caused by
11 bone loss on the patient, see if it's
12 enough, it requires some kind of
13 treatment, whatever it is, surgery or
14 whatever.

15 Q. And you mentioned perio
16 pockets, what is that?

17 A. When a patient, a person
18 loses bone, when they have periodontal
19 disease usually it's because they lose
20 bone.

21 The teeth are sounded by
22 bone and they're secured by bone. Now if
23 a patient loses the bone and the bone
24 goes down, the gum stays the same way and
25 creates a pocket between the gum and the

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2 lost bone and food and everything gets in
3 there and creates infection,
4 inflammation.

5 Q. And in the course of your
6 career, have you learned how to evaluate
7 periodontal pockets by measuring them?

8 A. Not really, no. That's not
9 my job.

10 Q. Between January 2004 up
11 until the end of March of 2006, that time
12 frame, did you have a periodontist on
13 staff in your office?

14 A. We always had -- we always
15 had a periodontist in my office.

16 Q. Who was it who was working
17 in your office during that period of
18 time?

19 A. If I'm not mistaken, Dr.

20

21 Q. And were there times that
22 you would have a patient of yours be
23 treated and evaluated by Dr., is it Dr.
24 ?

25 A. Dr. . He's not there

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2 anymore.

3 Q. No, I'm only talking about,
4 and again --
5 A. At that time.
6 Q. -- all of my questions are
7 going to relate to that time period
8 unless I indicate otherwise.
9 A. Yes. Right.
10 Q. And if Dr. had
11 performed periodontal evaluation or
12 treatment on a patient, would you expect
13 that that doctor would have made a note
14 of that in the patient's chart?
15 A. Definitely.
16 Q. Other than Dr. , were
17 there any other periodontists that you
18 had employed in your office from 2004 to
19 the middle of 2006?
20 A. No.
21 MR. : Just one point,
22 your Bill of Particulars talks about
23 negligent acts that took place on
24 December 4th, 2001. Are you amending
25 that the negligent acts first took
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15

1 place in January 2004?
2 MR. OGINSKI: No.
3 Off the record a second.
4 (A discussion was held off
5 the record.)
6 MR. : Do you know when
7 Dr. left?
8 THE WITNESS: Not exactly,
9 no.
10 Q. In your evaluation of
11 Mr. dental records in
12 preparation for today, did you see any
13 notes by Dr. that he had evaluated
14 and treated Mr. from 2004 up
15 until his last visit in your office?
16 A. Yes.
17 Q. And when was that?
18 A. 9/21/05.
19 Q. And the notes that you are
20 referring to, Doctor, is that in Dr.
21 's handwriting?
22 A. Right.
23 Q. Could you please, the best
24 you can, read Dr. 's note?
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1 A. That's a little difficult.
2 Q. And if there are
3 abbreviations tell me what they
4 represent.
5 A. I honestly don't know how to
6 read his handwriting.
7

8 Q. As best you can.
9 A. I spoke to him when I was
10 talking to --
11 Q. I just want to know what the
12 note says.
13 A. I really don't know because
14 the way he writes, unfortunately.
15 Q. Can you read any part of the
16 notes?
17 A. It was somebody of your
18 office.
19 MR. : No. No. Okay.
20 Stop right there.
21 THE WITNESS: I can't read
22 it, that's the problem.
23 MR. : Stop right there.
24 If you can read it you can
25 read it. If you can't, you can't.

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2 THE WITNESS: I can't, no.
3 Q. Is there any part of his six
4 line note or seven line note that you can
5 read?
6 A. No, not really.
7 Q. Do you know why he was seen
8 by Dr. on that date?
9 A. I referred him to him.
10 Q. Why?
11 A. Well, if you look at the
12 chart he has always had periodontal
13 problems.
14 Q. I'm only asking specifically
15 for this particular visit, why was he
16 referred at that time?
17 A. Because he wanted some kind
18 of permanent bridges on his teeth, and I
19 just wanted to make sure that it was okay
20 by a periodontist, if he ok'd that they
21 were strong enough for a permanent bridge
22 then I would have made a permanent bridge
23 for him.
24 Q. Did Dr. do any perio
25 charting on 9/21?

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2 A. Probably did. I really
3 don't know.
4 Q. Is there any notation in his
5 note or elsewhere that would show you or
6 suggest to you that perio charting was
7 done on that visit?
8 A. As I said, I can't read it.
9 I can't read it.
10 Q. If you had a question about
11 Dr. 's note at the time that he was
12 still working in your office, what would

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13 you do to find out what treatment he
14 rendered and what his findings were?
15 A. Well, he would talk to me.
16 He would tell me if I should go ahead and
17 continue the treatment or not.
18 Q. Do you have any memory as
19 you sit here now about any conversation
20 you had with Dr. on or about
21 September 21 concerning his evaluation of
22 Mr. ?
23 A. He just told me that they
24 were not the best candidate, those teeth
25 were not the best candidates for a

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1 permanent bridge.
2 Q. Which teeth?
3 A. The anterior teeth.
4 We were planning to cap all
5 the anterior teeth and then we decided, I
6 decided that that's not a good idea
7 because he may lose his teeth faster than
8 he should.
9 Q. Was there any evidence of
10 bone loss on 9/21?
11 A. Yes.
12 Q. Where was the bone loss?
13 A. There was always.
14 Q. Where was the bone loss that
15 was observed on 9/21?
16 A. Almost all his mouth.
17 Q. Are you talking about
18 generalized bone loss?
19 A. Generalized, right.
20 Q. Was there any specifically
21 that you had attributed or why he had
22 experienced a generalized bone loss as of
23 September 21, 2005?
24 A. I'm sorry?

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2 Q. Had you ever come to any
3 opinion or a working diagnosis as to why
4 he was having --
5 A. Always --
6 Q. -- as to why he had the
7 generalized bone loss?
8 A. As I said, first time I saw
9 him I noticed in the X-rays that he had
10 bone loss in '96.
11 And I had, if you look at
12 the charts, I referred him every time he
13 came, I asked him to see a periodontist
14 and he didn't. He refused to see a
15 periodontist, he didn't want to see him
16 for some reason and, of course, he saw
17 him one more time in 9/13/2000, there is

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18 another note that says he needs four
19 quadrant surgery.
20 On 9/13/2000 I can read
21 that, it says, four quadrant periodontal
22 surgery he needs. But he never
23 continued, he never --
24 Q. That's a note by Dr. ?
25 A. , right.

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2 Q. And did that note indicate 21
3 why he needed the surgery?
4 A. I sent him before that on
5 9/7/2000, I wrote down, exam, needs perio
6 treatment, refer to periodontist.
7 On 9/13/2000 he saw the
8 periodontist. The periodontist, as I
9 said, I'm not a periodontist, I can't
10 tell --
11 Q. I'm only asking, Doctor, why
12 he needed the four quadrant surgery?
13 A. Because he had bone loss and
14 probably pockets, whatever, and Dr.
15 --
16 Q. Does Dr. 's note
17 indicate that there was perio pockets or
18 a particular perio depth?
19 A. I really can't read his
20 handwriting.
21 Q. Is there anything in your
22 note around that time to suggest that the
23 patient had periodontal pockets?
24 MR. : Why don't you
25 take a look?

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2 A. I look at the X-rays. 22
3 Q. I'm asking in your notes.
4 A. No, I just wrote down needs
5 periodontal treatment.
6 Q. Doctor, when you mentioned
7 to me that even as early as 1996 you felt
8 that the patient had bone loss, is there
9 anything in your office records, in your
10 notes, to confirm that you felt that the
11 patient had bone loss separate and apart
12 from any X-rays?
13 A. No. That's what I go by,
14 the X-rays.
15 Q. Would you agree, Doctor,
16 that the only way to confirm that the
17 patient has bone loss is by viewing an
18 X-ray?
19 A. No.
20 MR. : I'm just
21 objecting to the form of the
22 question. You could answer the

23 question.
24 A. No, I'm not the
25 periodontist.

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1 23

2 Q. You can also --
3 A. When I suspect that somebody
4 has periodontal problems, I refer them to
5 periodontist and he'll decide if they
6 need --

7 Q. I'm only referring to the
8 comment you made that as early as 1996
9 you observed that the patient had bone
10 loss.

11 A. Right.

12 Q. Is there anything in your
13 notes in 1996 to confirm your observation
14 of bone loss?

15 A. As I said, again, I just
16 wrote down, needs perio treatment, refer
17 to periodontist.

18 Q. Does that mean that the
19 patient had bone loss?

20 A. Yes.

21 Q. Where?

22 A. Has to be generalized.

23 Q. I don't want you to guess,
24 Doctor.

25 Is there anything in your

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2 note which would tell you where?

3 A. No.

4 But I have to mention, if I
5 suspect that bone loss is limited to one
6 area I would write it down. If I don't
7 write it down it means that it's
8 generalized, the patient needs at least
9 evaluation.

10 Q. Did you have a hygienist
11 working for you?

12 A. No.

13 Q. Were you experienced in
14 performing dental cleanings?

15 A. Did I do -- yes.

16 Q. And did you also do scalings
17 and root planings?

18 A. Yes.

19 Q. And between 2004 and 2006,
20 did you ever perform a cleaning on
21 Mr. ?

22 A. I don't recall it. I don't
23 remember.

24 Q. If you had --

25 A. 2000 --

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2 Q. Hang on, Doctor, hang on.
3 MR. : Could you just --
4 (A discussion was held off
5 the record.)
6 Q. Doctor, if you had performed
7 a cleaning on a patient, would it be good
8 practice to make a note of that in the
9 patient's chart?
10 A. Definitely.
11 Q. And if you, again, if you
12 had performed scaling or root planing,
13 would you again have made a note of that
14 in the patient's chart?
15 A. Right.
16 Q. Is there anything in
17 Mr. record from 2004 to 2006
18 to indicate that you had performed any
19 type of cleaning?
20 A. No.
21 Q. Did you perform any type of
22 cleaning during that period of time?
23 A. No.
24 Q. Is there any reason that you
25 can tell me as to why no cleanings were
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1 done during that period of time?
2
3 A. Because I expected him to
4 see the periodontist and he would have
5 done everything, including the root
6 planing and cleaning, whatever was
7 necessary for him. I didn't think that I
8 can do a thorough job as a periodontist
9 can do it.
10 Q. And did you tell
11 Mr. at any time that that was
12 the reason why you did not do the
13 cleaning, that you wanted him to have a
14 periodontist do the cleanings?
15 A. Yes.
16 Q. Did you tell him how often
17 he should be having cleanings?
18 A. Oh, if you look at the chart
19 he never listened to me.
20 Q. No, I'm only asking whether
21 you told him --
22 A. It was useless.
23 Q. Let me rephrase my question,
24 Doctor, maybe I wasn't clear.
25 Did you ever tell him how
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2 often he should be having cleanings of
3 his teeth?
4 A. That has nothing to do with
5 it. I told him --
6 Q. That's my question.

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7 MR. : Wait a minute.
8 He's saying did you tell him
9 how often he should have cleanings of
10 his teeth?

11 THE WITNESS: I told him
12 it's a very good thing to brush his
13 teeth three times a day, he never
14 did.

15 Q. I'll get there.

16 A. What is the difference?

17 Q. I'll talk about hygiene.

18 A. He never listened to me.

19 Q. I'm only asking if you had a
20 conversation with Mr. .

21 A. Don't remember exactly, but
22 I'm sure that the whole idea was to have
23 him a real good treatment by a
24 specialist. And, as far as I remember,
25 maybe this has nothing to do with your

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1 question, but the relationship was
2 something else.

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3 Q. I'll get there too.

4 A. Okay.

5 Q. All I want to know is
6 whether you told Mr. --

7 A. I'm sure I told him.

8 Q. -- how often --

9 Do you have a specific
10 memory of talking to him and telling him,
11 look, Mr. , you need to have
12 dental cleanings x number of times per
13 year based on your dental condition, did
14 you say that?

15 A. Probably not in these words.

16 But what I'm trying to tell
17 you is that if I tell him you need
18 periodontal treatment and he doesn't
19 listen to me, why should I be wasting my
20 time telling him he needs a cleaning. He
21 doesn't believe me in the first place
22 that he needs a periodontal treatment,
23 which is the basic thing, then I probably
24 have told him, but, as I said, you know,
25

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1 he has his own mind and he was in his own
2 world.

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3 Q. What is the purpose of
4 scaling and root planing?

5 A. To remove the calculus from
6 around the gums. I do that when I don't
7 suspect any periodontal treatment, but if
8 I suspect that there is a bone loss and
9 periodontal treatment necessary, I'll
10 leave it to the specialist.
11

12 Q. If you knew that
13 Mr. was not listening to your
14 recommendation to go to a periodontist,
15 did you at any time undertake to treat
16 the calculous build-up that you may have
17 observed and perform a cleaning or a
18 scaling or root planing?

19 A. No, I couldn't do it.
20 See, I could not do such a
21 good job because when a patient has a
22 pocket and calculous it needs more than
23 just simple cleaning, which is
24 periodontist job. I cannot reach really
25 on the bottom of the pocket, I can not do

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1 30
2 that because I'm afraid that I'm going to
3 injure the gums and do more damage to the
4 patient --

5 Q. At any time --

6 A. -- when he can do it better
7 with no problem.

8 Q. At any time that you were
9 treating Mr. from 2001 up
10 until 2006, did you ever chart his perio
11 pockets, if there were any?

12 A. No. As I said, I don't know
13 anything about that. I'm not a
14 periodontist.

15 Q. Did your son work in your
16 office?

17 A. Yes.

18 Q. In what capacity?

19 A. He's a general dentist.

20 Q. Did your son ever treat

21 Mr. ?

22 A. Yes.

23 Q. On how many occasions?

24 A. I think once.

25 Q. And can you tell me when

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1 31
2 that was?

3 A. Yes. In 2005, 8/30/2005.

4 Q. And what is your son's name?

5 A. .

6 Q. Has last name is the same as
7 yours?

8 A. .

9 Q. What were the circumstances
10 under which Mr. saw your son
11 ?

12 A. My son is very good on some
13 kind of bondings.

14 Q. On what, I'm sorry?

15 A. Bondings, which is pretty
16 new and he does it better than me, so I

17 told Mr. he needed three
18 bondings on three teeth, number 11, 28,
19 and 29. He needed bonding on that date,
20 yes.

21 Q. Can you read his note,
22 please?

23 A. Yes. 11, 28, 29, B,
24 bonding, I think, one carpule 3 percent,
25 28, 29, A-3, that's the, A-3 is the

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2 shade --

3 Q. Go ahead.

4 A. -- that matches the tooth.
5 And number 11, A-3.5, and I don't know
6 the rest.

7 The patient took
8 premedication. Next, patient PRN, perio
9 consult.

10 Q. Did you have a conversation
11 with your son after that visit about the
12 treatment that he rendered?

13 A. No, not usually.

14 Q. Did you ever teach
15 Mr. how to brush his teeth?

16 A. No.

17 Q. Did you ever teach him the
18 importance of good oral hygiene?

19 A. I'm sure we talked about it.

20 Q. Do you recall specifically
21 having talks about it?

22 A. He had a problem that I
23 don't know if I want to mention to you or
24 not because I felt that he's using things
25 that he's not supposed to use and those

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2 substances are damaging his teeth, his
3 gums and everything else, and whatever I
4 say is not going to work, as I mentioned
5 to him many times.

6 Q. How did you know that he was
7 using things he shouldn't be using?

8 A. We have been friends for 20
9 years, supposedly. I used to see him
10 like at least four, five nights a week.

11 Q. You socialized with him,
12 right?

13 A. Yes.

14 Q. And that was at the social
15 club in ?

16 A. Yes.

17 Q. And then --

18 A. We're friends, supposedly,
19 so I know his habits. I know him.

20 Q. Did you ever personally
21 observe him using things you believe he

22 should not have been using?
23 A. No, I did not, but it was
24 common knowledge.
25 Q. I'm not asking about common

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1
2 knowledge, Doctor --
3 A. All right.
4 Q. -- I'm only asking about
5 things that you personally observed.
6 A. No, I did not see it.
7 Q. Did Mr. ever
8 specifically tell you that he was using
9 certain things that you believed he
10 should not be using?

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11 A. No. He always denied. He
12 says he has quit them, which I can't
13 believe.

14 Q. Doctor, are you a member of
15 the

16 ?

17 A. Yes.
18 Q. Do you also run the
19 Council?

20 A. Yes.
21 MR. : Note my
22 objections to those last two
23 questions.

24 Q. Before you extract a
25 particular tooth do you generally have a

0035

1
2 conversation with the patient about why
3 it may be necessary to remove the tooth?
4 A. Not necessarily at that
5 time, but I'm sure at the time I decide,
6 when I do the examination I decide that
7 that tooth has to be extracted I
8 definitely talk to him. Definitely, yes.

35

9 Q. And if there are
10 alternatives or options before extracting
11 the teeth, do you discuss with the
12 patient --

13 A. Definitely.

14 Q. -- the alternatives and
15 options available?

16 A. Yes, sir.

17 Q. Are you familiar with the
18 term vital and restorable?

19 A. Vital and restorable?

20 MR. OGINSKI: Well, let me
21 rephrase the question.

22 Q. If a tooth is vital, what
23 does that mean?

24 A. That doesn't mean anything.
25 It's vital, that's it.

0036

1
 2 Q. If a tooth is restorable,
 3 what does that mean?
 4 A. That means it's restorable,
 5 that has nothing to do with the vitality
 6 or the non-vitality.
 7 A tooth could be non-vital
 8 and still could be restorable. A tooth
 9 can be vital and have to come out.
 10 Q. When you say that the term
 11 the tooth could be vital, what do you
 12 mean by that?
 13 A. It means that the nerve is
 14 not dead, is not infected.
 15 Q. And if the tooth is not
 16 vital --
 17 If the tooth is not vital,
 18 what does that mean to you?
 19 A. The tooth can be non-vital
 20 by a few means, number one, the most
 21 common thing is the decay, when the tooth
 22 has decay and the patient neglects it, it
 23 progresses and reaches the nerve and the
 24 nerve becomes dead, infected and it's
 25 non-vital. Or sometimes by a blow, if a
 0037

1
 2 patient is in an accident in the tooth,
 3 can cut the nerve out, sever the nerve
 4 and become non-vital.
 5 Q. If a tooth is
 6 non-restorable, what does that mean to
 7 you?
 8 A. It means that it's decay
 9 beyond repair or by decay or by
 10 periodontal disease, either way.
 11 Q. If a tooth has had root
 12 canal, is there still nerve supply to the
 13 tooth?
 14 A. No.
 15 Q. After a tooth has undergone
 16 root canal, can it change color?
 17 A. Definitely.
 18 Q. Can it become more brittle?
 19 A. Definitely.
 20 Q. Are there times when a tooth
 21 that has had root canal will need to be
 22 extracted?
 23 A. If it's beyond repair, yes.
 24 Q. Would a tooth that has had a
 25 root canal, can a patient still
 0038

1
 2 experience pain in that particular tooth?
 3 A. Yes.
 4 Q. How?
 5 A. By letting it go. Usually

6 it's a good practice to make a crown for
7 a tooth that had root canal, that's what
8 we do, you put a post and a crown because
9 of the same reason that you mentioned it
10 changes color, it becomes brittle, so the
11 best thing is to make a post and a crown.

12 Q. What does that do for the
13 tooth?

14 A. It preserves it.

15 Q. Even with a crown, can you
16 still get decay underneath the crown?

17 A. Definitely.

18 Q. How do you detect decay
19 under a crown?

20 A. It's very difficult,
21 sometimes it doesn't show on the X-ray
22 because it's covered, the tooth is
23 covered by the crown and it doesn't show.

24 But the patient experiences
25 pain and then sometimes, very, very rare

0039

1

39

2 occasions you can see it, because if the
3 decay goes beyond the crown, under the
4 crown further into the tooth, then you
5 can see it.

6 Q. How do you treat decay under
7 a crown?

8 A. No way, there is no way.
9 You have to remove the crown sometimes
10 and see if it's restorable, but if
11 sometimes you see in the X-ray that it
12 has gone beyond the bone, it's not
13 restorable anymore, you cannot go into
14 the bone.

15 Q. If there is decay visible
16 underneath the crown, is one way of
17 treating it by drilling into and through
18 the crown to treat the decay?

19 A. No.

20 Q. You have to remove the crown
21 itself?

22 A. Yes.

23 Q. And in terms of difficulty,
24 how difficult is that to remove the
25 crown, treat the decay and put a new

0040

1

40

2 crown on?

3 A. As I said, if a decay is
4 visible, it means that you can see it by
5 the X-ray, that means that it's beyond
6 repair, you don't have to remove the
7 crown anymore.

8 Q. And what options --

9 A. Nothing, pull the tooth out,
10 that's it.

11 Q. That's the only treatment
12 that's available?

13 A. Yes.

14 Q. How would you determine
15 whether or not the tooth was
16 non-restorable with decay underneath the
17 crown?

18 A. As I said before, if the
19 decay in any tooth, whether root canal or
20 no root canal or whatever, if the decay
21 goes beyond a certain point into the
22 bone -- no bone is not restorable, there
23 are few instances that we can do
24 surgery -- not we, a periodontist can do
25 surgery and go under the bone, remove the

0041

1

41

2 bone and the gum so the decay can be
3 cleaned and restored.

4 Q. What if the decay doesn't go
5 down into the bone but is still present,
6 how do you treat that?

7 A. That you can take the crown
8 off and treat it.

9 Q. And how do you treat it?

10 A. Clean it out and fill it
11 with some kind of material and put the
12 crown back.

13 Q. And do you generally put the
14 same crown back on or you use a new
15 crown?

16 A. No, you have to use a new
17 crown, usually.

18 Q. And, Doctor, how often do
19 you take X-rays of teeth that have crowns
20 on them?

21 A. There is no set time.

22 Q. Is there a period of time
23 that you would consider good dental
24 practice to evaluate teeth that have
25 crowns to see whether or not there is

0042

1

42

2 decay underneath the crown?

3 A. By a routine examination
4 when the patient comes in.

5 Q. But other than doing a
6 clinical exam, is there some period of
7 time in which you say, you know what,
8 every year we're going to get some
9 X-rays, some films of the teeth that you
10 have with crown, see if there is any
11 decay underneath or every two years or
12 some other time period?

13 A. As I said, the normal
14 practice is a checkup every six months
15 and we take X-rays every six months on

16 regular patients and we do examinations
17 under crowns, on the teeth and everything
18 else.

19 Q. Is it your practice that you
20 do a full mouth series every six months?

21 A. No.

22 Q. Under what circumstances or
23 how often do you do full mouth series?

24 A. Usually three, four years
25 and in between we take recall X-rays, six

0043

1 or eight. Also, unless the patient has a
2 particular problem that we take that
3 X-ray from that tooth.

43

4 Q. At any time that
5 Mr. was treating with you from
6 1996 up until 2006, did he ever, to your
7 knowledge, go see a periodontist?

8 MR. : Besides the two
9 visits that he has in his notes?

10 MR. OGINSKI: Correct.

11 A. I don't know. I don't think
12 so.

13 Q. If you had asked
14 Mr. to see the periodontist,
15 would he have to return to your office on
16 a separate visit to see him, Dr. ?

17 A. Yes.

18 Q. Did you ever refer
19 Mr. out to an outside
20 periodontist for any evaluation or
21 treatment?

22 A. No.

23 Q. Did you have any oral
24 surgeon working in your office at any

0044

1 time?

44

2 A. No.

3 Q. Did there come a time in
4 2005 when Mr. had oral surgery
5 performed in your office?

6 A. I suppose so.
7 2005?

8 Q. Yes.

9 A. No. 2005, no. Not in 2005.

10 Q. Was there --

11 A. Oh, yes, I'm sorry, tooth
12 number 15. On 12/5/05 tooth number 15
13 was extracted by me.

14 Q. No, that wasn't what I was
15 referring to.

16 Okay. Hold on one second.

17 Take a look, please, at the
18 September 21, 2005 note. That's the
19 periodontist?
20

21 A. Yes, 9/21/05.
22 Q. Okay. And do you recognize
23 that handwriting to be Dr. 's
24 handwriting?
25 A. Yes.

0045

45

1
2 Q. Now, this is your billing
3 sheet, a computerized billing sheet,
4 Doctor?
5 A. Yes.
6 Q. And on the billing sheet
7 that corresponds to September 21, 2005 --
8 MR. : Can we get that
9 marked?
10 MR. OGINSKI: Sure.
11 (The above-referred-to
12 document was marked as Plaintiff's
13 Exhibit Number 1 for identification
14 as of this date.)
15 Q. Doctor, do you have your
16 billing sheets with you?
17 A. I don't think so.
18 Q. Where would they be kept?
19 A. I don't think we keep it in
20 our chart.
21 Q. Where do you keep it?
22 A. We give it to the patient,
23 that's it. I don't think I have that.
24 Q. Does your office keep a copy
25 of the billing chart?

0046

46

1
2 A. I don't think so.
3 It belongs to the patient.
4 It has to be in the chart, if we don't
5 have it in the chart means I don't have
6 it.
7 Q. How would you know how much
8 the patient owed if you didn't keep it in
9 the chart?
10 A. We mark it down on his chart
11 how much he paid. It's written here and
12 the others are in the computer.
13 Q. If you needed to get a copy
14 of the patient's billing chart for any
15 treatment --
16 A. I just go to the computer.
17 Q. Okay.
18 I would ask that you do that
19 and provide a copy to your attorney for
20 all treatment you have for
21 Mr. .
22 A. Okay.
23 Q. Doctor, I'm going to show
24 you what's been marked as Plaintiff's 2
25 for identification, it consists of three

0047

1

47

2

pages.

3

A. Okay.

4

Q. And can you tell me what

5

those three pages are?

6

A. These are transactions done

7

in my office, I guess, and whatever

8

Mr. paid.

9

Q. And who makes the entries

10

that would compile or comprise the

11

notations that are seen --

12

A. My wife does that.

13

Q. And what is your wife's

14

name?

15

A. Shahla.

16

Q. And does she still work in

17

your office?

18

A. Yes.

19

Q. And what is her function in

20

the office?

21

A. She's the manager.

22

Q. And, Doctor, the three pages

23

that you had originally provided to my

24

office copies, this only goes up to

25

December 12th, 2005, do you know whether

0048

1

48

2

Mr. was billed for any

3

treatment he received after

4

December 12th, 2005 to the end of March,

5

2006?

6

A. No, I really don't know. I

7

usually don't get involved with the

8

payments, that's my wife's job. She does

9

all these things, billing and receiving,

10

she takes the money, whatever she does.

11

Q. Looking at your computerized

12

billing sheet, Doctor, for September 21,

13

2005, I actually have it highlighted

14

here, do you see it says OSS surgery, is

15

that osseous surgery?

16

A. Yes.

17

Q. What does that mean to you?

18

A. Surgery. Osseous surgery,

19

upper right, upper left, lower right.

20

Q. And what type of doctor

21

would perform that type of surgery?

22

A. Periodontist.

23

Q. Did you ever have an oral

24

surgeon come into the office to perform

25

oral surgery?

0049

1

49

2

A. No.

3

MR. : On

4

Mr. ?

5 MR. OGINSKI: Yes.
6 MR. : Okay.
7 Q. Did there come a time when
8 Dr. left your office, left your
9 employ and Mr. needed
10 additional treatment to do the lower
11 quadrant, the lower portion of his mouth
12 for the same type of procedures that he
13 had?
14 A. I honestly don't remember.
15 I don't remember when he leave.
16 Q. Is there anything that you
17 were able to read in the September 21st
18 note --
19 A. No.
20 Q. -- that would suggest to you
21 that the doctor was recommending
22 additional treatment to any other part of
23 Mr. mouth?
24 A. Probably, probably but I
25 can't -- no, I can't read it. I can't

0050

1 read his handwriting.
2
3 Q. Okay.
4 I'd like you to turn,
5 please, to your office notes for
6 Mr. for the first visit you
7 had in 2004 with him.
8 A. That is 9/30/04.
9 Q. Okay. And, Doctor, before
10 we actually read that note, I'd like you
11 to go to your X-rays and see if you have
12 X-rays for January 30, 2004.
13 A. January 30, 2004?
14 Q. Yes.
15 A. January 2004, no.
16 Q. Doctor, I'm going to show
17 you X-rays that your office had provided
18 to me at our request when we asked for
19 them.
20 I'm going to ask you to take
21 a look at this, please. Written on the
22 sheet that I've just provided to you, do
23 you see that there are three different
24 X-rays visible on there?
25 A. Yes.

0051

1
2 Q. And on the left of it --
3 A. It says 1/30/04, you're
4 right. But, I mean, I have to have it
5 then.
6 Let me look. A better look.
7 MR. OGINSKI: Off the
8 record.
9 (A discussion was held off

50

51

10 the record.)
11 A. I must have made a mistake,
12 it was 9/30/04, I put down 1/30/04,
13 that's the only explanation because I
14 have 9/30/04 and that is the same X-ray.
15 MR. : Let's see if it's
16 the same.
17 THE WITNESS: It is the
18 same.
19 You see the post-op -- this
20 one is this one, it's marked 9/30. I
21 made a mistake, I put down 1/30.
22 Q. The single, you call that a
23 bite wing?
24 A. No, that's a PA. That's the
25 post-op, postoperative X-ray of tooth

0052

1
2 number 30 had root canal done.
3 Q. And those are put into
4 little --
5 A. Envelopes.
6 Q. -- envelopes and the dates
7 on the envelope?
8 A. And marked, yes.
9 That was my mistake, I put
10 down 1/30. I'm sorry, it was 9/30.
11 MR. : The root canal
12 was done on 9/30?
13 THE WITNESS: 9/30/04, and
14 that thing I made a mistake marking
15 it, that's it. Otherwise, it's 9/30
16 and I have the 9/30 here, both X-rays
17 before and after the root canal.
18 Q. Okay.
19 Doctor, from September 30,
20 2004 all the way through the end of
21 March, 2006, did you ever --
22 What is a treatment plan?
23 A. A treatment plan is, as I
24 said, what we decide to do for a
25 treatment.

0053

1
2 Q. Did you ever form a
3 treatment plan for Mr. from
4 2004 up until 2006?
5 A. Yes.
6 Q. Where do you have noted
7 within your record a treatment plan
8 during that time period?
9 A. On 10/7/04 a full mouth
10 series, and I charted the patient, that's
11 the treatment plan. I didn't write down,
12 examination, and that is what the
13 treatment there, that is the treatment
14 plan. And, again, referred to

52

53

15 periodontist.
16 Q. Hold on.
17 Can you read what your
18 10/7/04 note says?
19 A. Full mouth series, exam,
20 referred to periodontist.
21 Q. What were your findings on
22 exam, Doctor?
23 A. What's written on the chart.
24 Q. Which is --
25 A. Root canal --

0054

54

1
2 Q. Wait, wait.
3 Are you saying that the
4 notations that appear at the top of the
5 chart were all written on 10/7/04?
6 A. Probably, most of them.
7 Probably.
8 Q. Is there any way to tell as
9 you sit here now as to when the notations
10 at the top, the diagrams of the mouth,
11 when those notations were made?
12 A. Not really, no.
13 You see the thing is that, I
14 have to mention something, you didn't
15 ask, I know, but with this Mr.
16 we had to change the things, and I didn't
17 think that it would come to this point
18 because sometimes he had this and
19 sometimes he had that, sometimes he
20 wanted this, and sometimes -- so I marked
21 it down here something, and he came next
22 week and says, you know what, I want to
23 do this, okay, we'll do this. That's the
24 whole problem.
25 I don't remember exactly

0055

55

1
2 what was -- usually the treatment plan is
3 what I write down.
4 Q. You're referring to the
5 diagram?
6 A. Right.
7 But, you see, this is the
8 whole thing, on this chart, if you look
9 at it, 9/30/04, we took two PA's and two
10 bite wings. The patient has pain on
11 number 30. The patient was premedicated.
12 So, 30 root canal, two canals, three
13 canals, one post-op X-ray, one carpule
14 Carbocaine 3 percent, and prescription
15 given Tylenol #4.
16 You see, that is marked on
17 the chart, root canal, post, crown,
18 number 30. So that is not part of
19 examination. Next visit 10/7/04. You

20 see, that was written before, because he
21 came with the pain on that tooth. We
22 took X-ray on that tooth only.
23 And then next week he came,
24 I said let's take X-ray of your whole
25 mouth, see what we're doing.

0056

56

1
2 Q. And what do you have
3 written?
4 A. Yes, and then probably I
5 wrote the rest.
6 Q. On October 7th, 2004 under
7 tooth 20, what do you have written there,
8 Doctor?
9 A. Number 20, DO, Dycal
10 amalgam, one carpule Carbocaine
11 3 percent.
12 Q. Was that for a filling
13 because of some cavity he had?
14 A. Tooth number 20, yes, I need
15 a filling on that tooth.
16 Q. What does, on the notation
17 10/14/04, what does that say?
18 A. 10/14/04? Miss appointment,
19 one hour appointment.
20 Q. What does that mean?
21 A. He had an appointment on
22 that day he didn't show up, 10/14. He
23 was supposed to come in and he didn't
24 show up. And then he comes --
25 Okay, the next question.

0057

57

1
2 Q. Did you ever personally
3 evaluate whether or not Mr.
4 had any perio pockets?
5 A. No.
6 Q. Is it true that over the
7 course of time that you treated
8 Mr. you performed a number of
9 extractions?
10 A. A few of them, I think, yes.
11 Q. I'd like to go back to
12 December 26, 1996, if you can, please, in
13 the office records.
14 A. Yes, that's the first visit.
15 Q. And on that visit, according
16 to your note, you extracted tooth number
17 14, right?
18 A. Right.
19 Q. What was the purpose of
20 extracting tooth number 14 at that time?
21 A. What do you mean?
22 Q. Why did you do it?
23 A. It was no good. The patient
24 had pain probably.

25 Q. I don't want you to guess,

0058

1

58

2 Doctor.

3 I'm asking you, based upon
4 your notes, what was the purpose of
5 extracting tooth number 14 at that time?

6 A. The tooth was not
7 restorable.

8 If you look at the X-ray the
9 only thing left of the tooth is two
10 rotten roots. God cannot restore the
11 tooth.

12 MR. : You seem to be
13 asking two different questions, one
14 is what do his notes say --

15 Why don't you let him read
16 the notes and say what they say and
17 then ask him, if you want, a general
18 question, why did you do it and then
19 he can refer to these other things,
20 okay?

21 Q. Doctor, had tooth number 14
22 had any prior root canal by any dentist?

23 A. Yes.

24 Q. Had you done any root canal
25 to that tooth?

0059

1

59

2 A. No.

3 Q. Do you know when he had had
4 root canal done on that tooth?

5 A. No.

6 Q. Is there evidence of root
7 canal based on your viewing of the X-ray?

8 A. Yes. If you look at the
9 chart I wrote it down under the tooth RT,
10 that means that that, when he came to my
11 office that tooth had root canal on it.
12 But there was nothing left of the tooth,
13 the X-rays shows clearly there was
14 nothing left, just three rotten roots
15 that had to come out, had to come out, no
16 question about it, and I had to pull it
17 because I'm sure he was in pain.

18 I see infection in that root
19 very clear, bad infection, it had to come
20 out.

21 Q. Did you learn from
22 Mr. who was the last dentist
23 he had seen before you?

24 A. No.

25 Q. Did you ask?

0060

1

60

2 A. No.

3 Q. Did you ever obtain any

4 dental records from any prior dentists he
5 had been treated by?
6 A. Did I --
7 Q. Did you ever get copies of
8 any records or X-rays from any dentists
9 that he had seen before?
10 A. No.
11 Q. During the time that you had
12 treated Mr. from 1996 up until
13 2006, to your knowledge, did
14 Mr. ever see any other
15 dentists during that same time period?
16 A. Yes, I sent him to an oral
17 surgeon.
18 Q. I'm sorry, not dentists that
19 you referred him to --
20 A. No, I don't know.
21 Q. -- but anyone else that he
22 may have seen that you learned about?
23 A. I have no idea, no.
24 Q. Can you turn, please, to
25 your office note of May 6, 1997?

0061

1
2 A. May 6 --
3 Q. Yes, '97.
4 A. Number 17, extracted.
5 Q. Why was that tooth extracted
6 on that date?
7 A. Patient had pain, shows in
8 the X-ray, it was a wisdom tooth, no
9 opposing tooth, so it was a useless tooth
10 in the mouth.
11 Q. Where in your notes do you
12 indicate that the patient had pain on
13 that visit?
14 A. I did not note it.
15 Q. As you sit here now, you
16 recall that Mr. complained of
17 pain on that visit?
18 A. No, I'll look at the X-ray.
19 As I said, by examination I
20 had explained it to him before when I did
21 on 12/26/96 I did full mouth series, I
22 did exam, I marked number 17 for
23 extraction also, and that's when I
24 explained to him that that tooth has to
25 come out.

0062

1
2 Q. Did that tooth number 17
3 have root canal on it --
4 A. No.
5 Q. -- before coming to you?
6 A. No.
7 Q. What was it about that tooth
8 that made it non-restorable?

61

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9 MR. : Do you want to
10 look at your X-ray?

11 A. No. It was not worth
12 restoring it because there was no
13 opposing tooth to it, there was no upper
14 tooth, so the patient was not using it
15 anyhow, restorable or not restorable, and
16 it wouldn't be worthwhile to fix it, to
17 restore it.

18 Q. You told me at the beginning
19 of our questioning that it was important
20 to try and save and preserve the
21 patient's natural tooth.

22 A. That is necessary,
23 definitely. But this tooth was doing
24 nothing there, it was like a sixth finger
25 over there because there was no opposing

0063

1 tooth and there was decay on it, and in
2 my opinion I don't think it's appropriate
3 to subject the person to \$1,000, 1,500,
4 \$2,000 to restore a tooth that he's not
5 using.
6

63

7 MR. : Just let me,
8 Doctor, the first question he asked
9 about trying to restore the teeth, is
10 there some different standard when it
11 comes to wisdom teeth?

12 THE WITNESS: Yes,
13 definitely.

14 Usually they don't restore
15 wisdom teeth unless it's absolutely
16 necessary. If a patient is missing
17 the tooth next to it and that tooth
18 is necessary to make a bridge, yes,
19 but other than that nobody restores
20 -- if it's a filling, a simple
21 filling, it doesn't need a lot of
22 expenses, yes. But in my career I
23 don't think, you know, it's
24 appropriate to spend so much money on
25 a tooth that you're not even using

0064

1 it.

64

2 Q. Now, you know that
3 Mr. had no dental insurance,
4 correct?

5 A. He had, at some point he
6 did.

7 Q. But for the majority of the
8 treatment, certainly from 2001 up until
9 2006 --

10 A. Yes, he didn't. You're
11 right, I don't think so.

12 Q. -- he was paying cash out of
13

14 his pocket?

15 A. I think so, yes.

16 Q. Were there times that you
17 were treating him that he was either not
18 fully paid up or owed you money?

19 A. I really don't know, that's
20 my wife's job.

21 Q. If Mr. owed you
22 money and needed to have further dental
23 treatment, would you continue to treat
24 him more, would you require that he pay
25 up in full before undergoing any

0065

1

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2 additional treatment?

3 A. I never asked him for money.

4 I told you, our relationship
5 was supposedly like a friend. I didn't
6 even care if he paid or he didn't pay. I
7 was treating him like my brother. And I
8 honestly didn't care if he didn't pay. I
9 just wanted him to have good teeth,
10 that's it.

11 And I never, ever spoke to
12 him about money. I don't speak about
13 money with any of my patients, that's not
14 my job, my wife takes care of that.
15 Whatever she knows, whatever the prices
16 and that's it and she talks to them.

17 And he was so friendly with
18 me he calls my wife by her first name, he
19 doesn't call her Ms. or anything
20 else,
21 , that's how close we were. So
22 there you go. And I'm sure she didn't do
23 it either, demand money, there wasn't
24 such a thing, I don't think so.

25 Q. Turn, please, to your

0066

1

66

2 February 17, 2000 note.

3 A. February 17, 2000?

4 Q. Yes. Do you see that?

5 A. Yes.

6 Q. You referred him to an oral
7 surgeon for extraction?

8 A. Yes. Number 32, right.

9 Q. Who did you refer him to?

10 A. Dr. . Dr. .

11 Q. Why did that tooth need to
12 be extracted?

13 A. It had decay and -- if you
14 look up there, one PA, one bite wing,
15 that means that patient came just for
16 that tooth. That means that he requested
17 to be seen for that tooth only, nothing
18 else. That means he had pain.

19 Q. Doctor, would you agree that
20 it's good practice if a patient comes in
21 complaining of pain in a particular tooth
22 you make a note of that, patient
23 complains of pain at tooth number,
24 whatever it is?

25 A. Probably, but at that time

0067

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2 he came in and he had pain in that tooth,
3 we took X-rays and referred him to an
4 oral surgery.

5 Q. Other than your
6 interpretation of your note, is there
7 anything within your note to indicate
8 that the patient had pain?

9 A. No, I did not write it down.

10 Q. Did tooth number 32 have any
11 fillings on it?

12 A. I have no idea. I can't --
13 I can look at the X-ray and
14 tell you.

15 Q. Well, your PA and your bite
16 wing does that indicate that he had any
17 fillings on that tooth?

18 A. 2/17/2000. One second.

19 It did not have decay. It
20 had a filling in it. Yes, it had a
21 filling in it.

22 Q. Did it have root canal?

23 A. No, it did not have root
24 canal, but it had a huge pocket, bone
25 loss -- not a pocket, it had a huge bone

0068

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2 loss and it was, again, a wisdom tooth
3 that had no opposing tooth on the upper,
4 the upper right. So, again, it was doing
5 nothing at that point for the patient.

6 Q. Was it your opinion that
7 extracting the tooth would be better for
8 the patient rather than trying root
9 canal?

10 A. Right.

11 Q. Do you recall having a
12 conversation with Mr. about
13 why it would be more important to have
14 the extraction instead of other possible
15 treatment?

16 A. Again, it was a tooth that
17 was doing nothing there. There was an
18 extra tooth back there, it had no
19 opposing tooth, he was not using it. He
20 wouldn't lose any chewing power by losing
21 it and had a huge bone loss.

22 Q. Was there any reason as to
23 why you did not extract the tooth?

24 A. I felt it was a little
25 difficult, I may get into trouble myself.

0069

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2 Q. Let's turn, please, to the
3 January 24th, 2002 office note.

4 On that visit you extracted
5 two teeth, tooth number 2 and tooth
6 number 31, correct?

7 A. Right.

8 Q. Why did you extract tooth
9 number 2?

10 A. As I said, again, the tooth
11 -- I have to look at my X-ray. It had to
12 be plenty decay on there.

13 Let me see.

14 Q. Well, if there is decay,
15 Doctor --

16 A. 1/24/02?

17 Q. Yes.

18 A. That was part of the
19 treatment plan from 12/4/01, so the X-ray
20 has to be 12/4/01.

21 Yes, entirely broken tooth
22 with a prior root canal, decayed beyond
23 repair.

24 MR. : Which one, two or
25 31?

0070

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2 THE WITNESS: Number 2.
3 Number 2, definitely.

4 And number 31 shows a huge
5 filling in it.

6 Must have been -- let me
7 see.

8 Yes, number 31 had a huge
9 filling on it, and --

10 Q. There was no evidence of
11 root canal on number 31?

12 A. No.

13 Q. Why was 31 not restored by
14 root canal?

15 A. I don't remember now.

16 Q. Is there anything in your
17 note to indicate?

18 A. It says patient has pain.

19 Q. Wait. Hold on. Let me just
20 ask a question and then you'll read your
21 note.

22 Is there anything in your
23 notes specifically that indicates, number
24 one, whether any other option was given
25 to the patient other than extraction for

0071

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2 tooth number 31?

3 A. It's not in the note, but
4 I'm sure we did discuss it.
5 Q. Hang on.
6 Is there anything in your
7 note indicating you had a discussion with
8 the patient about treatment options for
9 either tooth number 2 or 31?
10 A. No.
11 Q. Now, read your note, please,
12 for January 24, 2002.
13 A. Spoke with Dr. office,
14 patient has stopped taking aspirin, okay
15 for extraction. That means that I had
16 spoken to him about extraction and he had
17 agreed. So I spoke to his doctor and he
18 told me it's okay to extract the tooth.
19 That's what it means.
20 Q. What do you have written
21 underneath there?
22 A. Three carpules of Carbocaine
23 3 percent, 2/31 extracted, POIG, RX
24 Tylenol #4.
25 Q. What is POIG?

0072

72

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2 A. Instructions given to the
3 patient for after extraction.
4 Q. And is there anything in the
5 X-ray that you looked at in tooth number
6 31 which would indicate that this tooth
7 was not appropriate for root canal?
8 A. It had a huge bone loss, so
9 it was not a candidate for root canal or
10 any restoration. It wouldn't have
11 worked.
12 Q. Because of the bone loss?
13 A. Because of the bone loss and
14 the huge cavity on it.
15 It was a bifurcation
16 involvement means that the periodontal
17 disease had gone between the two roots
18 and that's usually indication for
19 extraction. Very difficult to restore
20 it.
21 Q. Can you turn, please, to
22 your October 22, 2002 note?
23 MR. OGINSKI: Off the
24 record.
25 (A short recess was held.)

0073

73

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2 Q. Doctor, can you, please,
3 look at your 10/22/02 note?
4 A. Right.
5 Q. On that visit you extracted
6 tooth number 8 and you inserted a
7 flipper?

8 A. Right.
9 Q. Why did you extract tooth
10 number 8?
11 A. This tooth, if you note
12 this, from the beginning, from the first
13 time he came to me, I have marked it down
14 that tooth had root canal and was
15 fractured on one-third, apical one-third,
16 it says fractured one-third.

17 Q. Where are you looking at,
18 Doctor?

19 A. The first page, 96.
20 12/26/96, I examined the
21 tooth, I wrote down root canal under. It
22 says, RT, means that it had root canal
23 and FX, fractured, one-third, means that
24 it was broken on the apex, near the, at
25 the end of the root, but there was no

0074

1 74
2 symptoms so we left it alone.
3 But then at that time when
4 he came I'm sure it was infected badly
5 and had to be extracted.

6 Q. What makes you believe there
7 was an infection going on on 10/22?

8 A. I look at the X-rays, that's
9 it.

10 Q. You can tell if a patient
11 has an infection based on the X-ray?

12 A. By examining the patient and
13 looking at the X-ray, yes.

14 Q. I'm just asking: Looking at
15 an X-ray, can you tell whether there is
16 an infection in the tooth?

17 A. 99 percent of the time, yes.

18 Q. Can you look, please, at the
19 X-ray that you have for tooth number 8?

20 A. What date, the same date?

21 Q. Well, you tell me, did
22 you --

23 A. 10/22/03? No.
24 '96 I look at the X-ray, I
25 just see a fracture, I don't see any

0075

1 75
2 infection at that time.

3 Q. Is there anything in your
4 note on October 22, 2002 to indicate that
5 the patient had an infection?

6 A. No.

7 Q. Is there anything -- did you
8 take an X-ray of tooth number 8 on
9 October 22?

10 A. Probably not.

11 Q. When was the last time you
12 took an X-ray of tooth number 8 before

13 extracting that tooth on October 22,
14 2002?
15 A. The last X-ray was 2001.
16 Q. I'm only asking about tooth
17 number 8.
18 A. I know. Let me just see.
19 No, I don't have an X-ray
20 here.
21 Q. Without an X-ray how are you
22 able to determine if the patient had an
23 infection or not?
24 A. Looking at the patient,
25 observing the patient.

0076

1
2 Q. And is there anything in
3 your note to suggest that the patient had
4 an infection --
5 A. No.
6 Q. -- on clinical exam?
7 A. No.
8 Q. Is there any reason that you
9 have in your notes or anywhere else to
10 indicate the reason for the extraction on
11 10/22/02?
12 A. Not in the note.
13 Q. What is a flipper, Doctor?
14 A. A flipper is a false single
15 tooth that replaces a missing tooth.
16 Q. Can you turn, please, to
17 January 11th, 2003 note?
18 A. Yes.
19 Q. And on that visit you
20 extracted tooth number 18, correct?
21 A. Right.
22 Q. And I'd like you to read
23 that note, please.
24 A. On 11/03?
25 Q. Yes.

76

0077

1
2 A. Two PA's, the patient took
3 four Amoxicillin.
4 The same date 1/11/03, 18
5 extracted, two carpules Carbocaine
6 3 percent POIG. Prescription,
7 Amoxicillin, 500 milligrams plus Tylenol
8 #4.
9 Q. Was it your custom, Doctor,
10 that for every extraction that you
11 performed you prescribed antibiotics?
12 A. No.
13 Q. Why did you do so in
14 Mr. case?
15 A. Because he had to take
16 Penicillin before any kind of dental
17 treatment.

77

18 Q. What was the medical
19 condition that he had that required
20 premedication or post-medication?
21 A. Some kind of heart problem.
22 I don't know.
23 Q. Do you know specifically?
24 A. No.
25 Q. Did you ever record what

0078

1
2 type of condition Mr. had that
3 required him to be premedicated?
4 A. A heart condition. If you
5 look at his medical records he mentions
6 heart conditions.
7 Q. Let's go up, please, to the
8 10/28/02 note for tooth number 18.
9 10/28/02. Can you read your note,
10 please?
11 A. 10/22 --
12 Q. 10/28.
13 A. 10/28/02, number 18 decayed
14 below the gum, not restorable, should be
15 extracted.
16 Number 19 decay is bigger,
17 may need root canal therapy. Again,
18 prescription, Amoxicillin,
19 500 milligrams.
20 Q. When you say number 19 decay
21 is bigger, bigger than what, bigger than
22 18?
23 A. No, bigger than was before.
24 Before I had marked it down for a
25 filling. In 2002 -- in 2000 it was

0079

1
2 marked for a filling with a question
3 mark, but now, after taking the X-ray or
4 whatever, I decided it was no good, it
5 needed root canal now.
6 Q. On that visit, on 10/28/02,
7 how did you know that 18 had decay below
8 the gum?
9 A. By X-ray. I think we had
10 taken an X-ray on the previous week or
11 previous month or whatever, 8/17/02, if I
12 look at that --
13 Q. That was two months earlier?
14 A. Yes.
15 Q. And isn't that referring to
16 tooth number 3, Doctor, when the patient
17 came in complaining of pain in number 3?
18 A. Number 3, yes, right.
19 Q. So, when had you taken an
20 X-ray of tooth number 18 prior to
21 October 28?
22 MR. : Do you want to

78

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23 look through your X-rays?
24 A. I have X-rays here. I
25 didn't mark it down in there, it's not

0080

1
2 written in the chart, but I have X-rays
3 here.

80

4 Q. What date?

5 A. 10/28/02.

6 Q. And is there a particular
7 reason as to why you would not have
8 written it in the patient's chart?

9 A. I forgot. I forgot
10 probably.

11 But it shows that tooth
12 number 18 has to come out, had root
13 canal, disintegrated, not restorable.

14 And tooth number 19, the
15 decay is progressed into the nerve and
16 needs root canal and it shows in the
17 X-ray.

18 I did not mark it down
19 probably not on the chart, but I have the
20 X-rays marked down with the date, the
21 same X-ray of the same teeth, teeth
22 number 18 and 19.

23 Q. Let's look, please, at your
24 December 5, 2005 office visit.

25 A. What was the date?

0081

1
2 Q. 12/5/05.

81

3 A. Yes.

4 Q. The patient had complaints
5 of pain in tooth number 15 on that date?

6 A. Wait a minute.

7 12/5/05, we took two X-rays
8 and four PA's.

9 Q. The next page.

10 A. The next page the patient
11 has pain on number 15, seen decay under
12 the gum.

13 Q. Does that say gum or crown?

14 A. Gum -- under the crown, I'm
15 sorry. Have to remake the bridge. Have
16 to remake the bridge.

17 Q. Does it say remove?

18 A. No. Remake.

19 Q. Remake.

20 Why would you have to remake
21 the bridge?

22 A. Take it off, clean the
23 cavity and put a new bridge, as we
24 discussed before, that if it's possible,
25 if you see, we discussed this before, you

0082

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2 asked me, if it's a decay under the crown
3 or a bridge, you take the bridge off, if
4 it's restorable, restore it, clean it and
5 put a new bridge.

6 Q. How do you know if it's
7 restorable?

8 A. By taking the bridge off and
9 then you find out that it's restorable or
10 not because you cannot say definitely if
11 it's restorable with the bridge on, with
12 the crown on, it doesn't show exactly the
13 progress of the decay because the crown
14 covers it.

15 Q. When you take the crown off,
16 do you then take another X-ray?

17 A. Not really, no.

18 Q. What was your finding as
19 to --

20 A. It had to come out, I
21 extracted the tooth.

22 Q. Why?

23 A. Because it was not
24 restorable.

25 I didn't write it down, but

0083

1 it was not apparently restorable.

83

2 Q. Is there anything in your
3 note to indicate that the tooth was not
4 restorable and needed to be extracted?

5 A. I did not write it down.

6 Q. Did tooth number 15 ever
7 have any root canal to it?

8 A. No.

9 Q. Did it ever have a filling?

10 A. It had a crown, it had a
11 bridge. It was part of a bridge.

12 Q. When you wrote seems
13 decayed, what were you referring to,
14 based on X-ray review, clinical review or
15 something else?

16 A. Probably X-ray.

17 Let me take a look.

18 12/5/02.

19 Yes, I have taken X-ray. I
20 told you the page before, you have
21 12/5/05, two bite wings and four PA's.

22 Yes, definitely decay under
23 the crown, you can see it in the X-ray.
24 Big, big bone loss on that tooth.

0084

1 Q. How long would you say the
2 bone loss had existed as of that time?

84

3 A. As I told you, when he came
4 to me the first time I suspected
5 periodontal disease, which he never
6

7 listened to me, he never followed the
8 instructions.

9 Q. And when you told him --
10 Well, he did, in fact, see
11 the periodontist twice in your office?

12 A. Years later, years later.
13 Because, you see, if you go to --
14 Okay, I'll answer your
15 questions.

16 Q. How many times would you say
17 you recommended that the patient see a
18 periodontist other than the two times
19 that he saw him in the office?

20 A. I really don't know. I have
21 to count them. It looks like every time
22 I saw him I told him.

23 You see, that's the problem
24 here that he was not a regular patient,
25 he was my friend and that was the

0085

1
2 problem. And I would talk to him
3 friendly, that's probably, that's why I
4 did not mark it down. I talk like I'm
5 talking to a friend of mine and he
6 listens to me, but apparently he didn't.

7 Q. Do you have any knowledge as
8 to why he did not see a periodontist at
9 your recommendation other than the times
10 that he saw Dr. --

11 A. Counselor --

12 Q. -- the doctor in your
13 office?

14 A. It's difficult to explain,
15 but he never listened to me for anything,
16 and that's why during this mess, I can't
17 talk for him, I don't know what went
18 through his mind, that I don't know.

19 Q. Let's turn, please, to the
20 March 22nd visit -- actually, the
21 March 20 visit, 2006.

22 A. March --

23 Q. -- 20, 2006.

24 A. Yes.

25 Q. I'd like you to read your

0086

1
2 note, please.

3 A. Number 12 CC cemented.

4 Q. What does CC mean?

5 A. Ceramical crown cemented,
6 parenthesis, patient advised because he
7 did not keep his appointment for
8 cementing on time it may have been
9 decayed and cause problem.

10 Q. What did you mean by that,
11 doctor?

85

86

12 A. I usually, when we make a
13 crown we don't cement it. When the
14 patient comes in when it's ready we just
15 put it in, and because most of the times
16 they need adjustment we just put it in
17 the mouth and let the patient try for a
18 few days and then when he comes back we
19 examine it, if there is any problem and
20 we can fix it, we can adjust it, we do
21 it. If you have to change, it we change
22 it. We have to make sure that everything
23 is okay before we cement it. And the
24 only way to find out is to put it in
25 there without cement so we can remove it

0087

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87

2 easily. But usually that's for three,
3 four days, then that's it.

4 But in this particular case,
5 I inserted a crown on 12/27/05, and he
6 did not come back until 3/20/06, three
7 months later.

8 Q. You said there may have been
9 decay.

10 A. Because usually when there
11 is no cement food gets in there, food
12 gets in there. It's not supposed to stay
13 that long.

14 Q. When you examined
15 Mr. on March 20, 2006, was
16 there decay that you observed?

17 A. No.

18 Q. So, then why did you write
19 that there may have been decay?

20 A. Because that usually
21 happens.

22 Q. But in this particular case
23 you said there was no decay?

24 A. No, I did not examine it.

25 Q. Let me ask you again.

0088

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88

2 A. Yes.

3 Q. Specifically, when
4 Mr. came back to you on
5 March 20, 2006, was there any decay that
6 you observed on tooth number 12?

7 A. I couldn't tell, no.

8 Q. Why? Why couldn't you tell
9 if there was any decay on there?

10 A. Because we don't do that,
11 usually don't do that.

12 We give the patient the
13 crown, he's supposed to come back and
14 have it cemented. We don't take X-ray
15 every time the patient comes in. But
16 there is a possibility that that will

17 happen and I advised him.
18 Q. The crown had not yet been
19 cemented, correct?

20 A. No. So there is a
21 possibility that the food gets in there
22 and decays the crown, the tooth.

23 Q. Hang on, Doctor.
24 When you took the crown off
25 to apply the cement --

0089

1
2 A. You can't see, no. It could
3 be under the --

89

4 See, the thing is that when
5 the crown is in there on the tooth it's
6 not cemented, food and bacteria can slip
7 in there and cause decay, that's not
8 observable because usually it's under the
9 bone, under the gum so I cannot see.

10 MR. : Was the reason
11 why you extracted the tooth because
12 he had the delay and you thought
13 there may be decay?

14 THE WITNESS: Right.

15 MR. : Okay.

16 THE WITNESS: No, he came
17 back with pain on that tooth.

18 Q. I understand.
19 Before you made a decision
20 to extract that tooth, wouldn't it have
21 been good practice to take an X-ray to
22 see whether, in fact, he did experience
23 additional decay from when you had last
24 seen?

25 A. Probably would have been,

0090

1
2 but as I told you unfortunately the
3 relationship was different than
4 patient/doctor, it was more of a
5 friendly --

90

6 Q. Doctor, if you told
7 Mr. that he needs an X-ray to
8 evaluate whether there has been decay
9 since he was last in your office three
10 months earlier, are you saying that
11 Mr. would have refused to have
12 an X-ray --

13 A. I don't know.

14 Q. -- if you told him it would
15 be necessary to treat the tooth?

16 A. I can't say that. I cannot
17 talk for him.

18 Q. Did you ever suggest to
19 Mr. on March 20, 2006 that you
20 take an X-ray to see whether or not there
21 was any additional decay that had taken

22 place?
23 A. No, I did not.
24 Q. Continue reading your note,
25 please.

0091

1
2 When you said patient is
3 very argumentative --
4 A. Patient is -- I remember
5 that.
6 Q. Just read it, please.
7 A. Patient is very
8 argumentative, does not keep his
9 appointment and wants to blame it on me.
10 Patient advised to go to another dentist,
11 I will see him for emergency for three
12 months and that's it.
13 Q. Obviously, the two of you
14 had some disagreement or some dispute,
15 correct?
16 A. Yes.
17 Q. Did any of the disagreement
18 or dispute involve dental care?
19 A. Yes.
20 Q. Did any of the dispute
21 involve payment of money that he had owed
22 to you?
23 A. No, that was never a
24 problem.
25 Q. When you said that he had

91

0092

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2 blamed it on you, what was it that he was
3 blaming on you?
4 A. You see, we're not talking
5 about this case with him, this number 12,
6 every tooth I did root canal almost
7 disintegrated because he did not show up
8 and that was my problem and that's what I
9 was discussing with him in general that
10 why do you waste your time, my time, your
11 money, for something that you're not
12 keeping it. I spent so much time, so
13 much energy to save this tooth and it
14 ends up with extraction.
15 Q. What was his response to
16 you?
17 A. Again, yelling and
18 screaming. I said, listen, you don't
19 have to scream to me I'm trying to give
20 you good advice.
21 Q. What was his answer in
22 response to your statements that you're
23 putting all this time and investment into
24 his teeth?
25 A. That's the way he was.

92

0093

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93

2 Somehow he was angry at me, at the world
3 and wouldn't take the blame because I
4 told him, I said you have to keep your
5 appointment.

6 If you look at his chart you
7 will see how many missed appointments and
8 was trying to tell him for his own good.
9 It was no good, he would get angry, he
10 would yell at me. I said, why are you
11 yelling at me, I'm trying to help you
12 really, I'm trying to save your teeth,
13 but you're wasting your time, your money
14 and you're going to lose your teeth this
15 way.

16 And he would get angry. You
17 don't expect me to talk for him. I don't
18 know what was going through his mind.
19 And I thought he was his friend and I
20 thought I'm his friend and I'm doing him
21 a favor, but it turned out this way, I
22 really don't know.

23 Q. Now, two days later on
24 March 22nd the patient returned to your
25 office and you made a decision to extract

0094

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94

2 number 12, correct?

3

A. Yes.

4

Q. Now, you wrote 12 seems
5 decayed under crown.

6

A. Yes, should be extracted.

7

Q. How did you know that there
8 was decay under the crown?

9

A. Because I took X-ray,
10 3/22/06 I took X-ray and I definitely see
11 a decay in there.

12

Q. Why wasn't that decay fixed
13 either by a filling or some other means?

14

A. It couldn't be, it was
15 beyond repair.

16

Q. Why did you cement the crown
17 knowing that there was decay there?

18

A. I didn't know. I suspected
19 there maybe.

20

Q. Had you known that that
21 was --

22

A. I would have taken the
23 tooth --

24

Q. Hang on.

25

A. Right.

0095

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2 Q. Had you known two days
3 earlier that there was the amount of
4 decay that you ultimately saw on
5 March 22nd, would you have cemented that

6 crown?
7 A. No.
8 Q. Why?
9 A. Because I would have made a
10 decision that it had to come out at that
11 time, as I said, because we don't
12 routinely take X-rays every time we see
13 the patient.
14 Q. But if you suspected --
15 A. Only if it's a problem. He
16 had no problem at that time.
17 Q. Because of that time delay
18 from when he last saw you until --
19 A. That was a possibility --
20 MR. : One at a time.
21 MR. OGINSKI: Let's take a
22 break for five minutes.
23 (A short recess was held.)
24 MR. OGINSKI: Back on the
25 record.

0096

1
2 Q. Had tooth number 12 had a
3 root canal on it, Doctor?
4 A. Yes.
5 Q. And had you performed the
6 root canal on that tooth?
7 A. Yes.
8 Q. Can you explain to me why
9 most of Mr. teeth that had
10 root canal ultimately required
11 extractions of those teeth?
12 A. I'm sorry?
13 Q. Can you tell me or explain
14 to me why most of the teeth that he had
15 root canals on ultimately needed
16 extraction?
17 A. As I said before, he did not
18 pay attention to his mouth, that was my
19 major problem, because he wouldn't come
20 on time to finish them or -- and I
21 suspect, I think that the things he was
22 using was causing all these problems.
23 Q. I'm going to get to that.
24 A. Because I had experienced
25 this before, I used to work with these

0097

1
2 people years ago.
3 Q. Which people?
4 A. People who were addicts,
5 drug addicts.
6 Q. Was it your opinion that
7 Mr. was a drug addict?
8 A. Yes.
9 Q. And that he had abused
10 drugs?

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11 A. Yes.
12 Q. And, Doctor, are there
13 certain types of medications which will
14 affect a person's dental condition, if
15 taken could affect it over a long period
16 of time?
17 A. I think so. I think
18 methadone is one of them, destroys the
19 bones and the teeth and everything else.
20 Q. Were you aware that
21 Mr. was a smoker?
22 A. Yes.
23 Q. Does smoking cause a
24 condition known as dry mouth?
25 A. It could.

0098

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1
2 Q. Did Mr. ever have
3 dry mouth?
4 A. Not in my opinion, no.
5 Q. You mentioned that
6 Mr. was a methadone user?
7 A. I don't know. I don't know.
8 I said people who use
9 methadone usually lose the bones, the
10 teeth, they have all these problems. I
11 have experience with those people.
12 Q. Where did you obtain
13 information that Mr. was a
14 methadone user?
15 A. I didn't. I didn't say
16 that.
17 Q. I'm sorry.
18 A. I didn't say that, no.
19 Q. Now, to your knowledge, was
20 Mr. taking any medications
21 which was affecting his dental condition,
22 prescription or otherwise?
23 A. Well, he took a lot of
24 Tylenol #4, which has a lot of codeine in
25 it.

0099

99

1
2 Q. And that would affect his
3 dental condition?
4 A. Like a drug, that's like a
5 drug.
6 Q. And how would that affect
7 his dental condition?
8 A. The same thing as other
9 drugs, like heroin or cocaine or --
10 Q. How would it affect his
11 dental condition by taking a medication
12 like Tylenol #4?
13 A. As I said, I'm not an expert
14 but I have some experience because I used
15 to treat these people in my office years

16 ago, 40 years ago in Manhattan. That's
17 what I observed, it's not a scientific
18 thing.

19 Q. My only question, Doctor,
20 I'm trying to find out, is taking Tylenol
21 #4 going to affect a person's dental
22 condition?

23 A. I don't know.

24 Q. Any of the other drugs that
25 you mentioned, is that going to affect a

0100

1 person's dental condition? 100

2 A. Definitely heroin I'm sure
3 it does, heroin and methadone are.

4 Q. As it relates to heroin, do
5 you have any knowledge as to whether
6 Mr. was taking heroin at any
7 time?
8

9 A. Not specifically, no, but I
10 know he was on drugs, that I knew.

11 Q. And what specific drugs was
12 he taking?

13 A. I have no idea. As I said,
14 he always denied it, but I knew he was
15 lying.

16 Q. How do you know that?

17 A. It was a common knowledge in
18 the -- there were people in that
19 years ago they used to do the drugs
20 together and they talk about it, they
21 bragged about it.

22 Q. But you never actually saw
23 him doing anything?

24 A. No.

25 Q. Were there times when

0101

1 Mr. had come into your office 101
2 for a visit when you had previously seen
3 him the night before at the club?
4

5 A. I don't remember.

6 Q. Were there times --
7 By the way, this club, this
8 club, did it serve alcohol?

9 A. Not that way, but I've seen,
10 they give them sometimes.

11 Q. I'm not talking about him,
12 I'm talking about in general did they
13 serve alcohol?

14 A. Not routinely, no.
15 In other words, they don't
16 sell alcohol, they don't serve alcohol,
17 no.

18 Q. When were you licensed to
19 practice dentistry?

20 A. When?

21 Q. When.
22 A. Did I get a license?
23 Q. Yes.
24 A. In this country?
25 Q. Yes.

0102

1
2 A. 1972. '71, I guess. 102
3 Q. Was your license to practice
4 dentistry ever revoked?
5 A. No.
6 Q. Was it ever suspended?
7 A. No.
8 Q. Where did you go to dental
9 school?
10 A. Dental School.
11 Q. When did you complete that
12 training?
13 A. .
14 Q. And when did you come here
15 to the United States?
16 A. .
17 Q. And
18 , how long have you been practicing
19 at that office?
20 A. Since 1980.
21 Q. And is that a professional
22 corporation or something else?
23 A. Yes; a professional
24 corporation.
25 Q. Are there any other owners,

0103

1 103
2 shareholders or partners in that
3 corporation --
4 A. No.
5 Q. -- other than yourself?
6 A. No.
7 Q. Is your son a shareholder of
8 the corporation?
9 A. No.
10 Q. Do you hold any other
11 certificates or any other educational
12 degrees other than that of a dentist in
13 New York?
14 A. No.
15 Q. After you came to the United
16 States did you do any other dental
17 training either in the form of a
18 residency or something else?
19 A. Yes.
20 Q. What did you do?
21 A. I worked in a clinic in
22 Manhattan, Clinic, for a year,
23 Dental , and that's why
24 I came here. Finishing dental school in
25 , I came here, I worked on that

0104

1

104

2 clinic for a year, then I
3 went back to my country and returned and
4 I was here working a few years and then I
5 took the exam and I got my license, in
6 1971 or 1972.

7 Q. Did you have to take an exam
8 more than once in order to pass it?

9 A. No.

10 Q. Is there any type of Board
11 certification that you are familiar with
12 that you need to take an exam similar to
13 physicians or medical doctors?

14 A. I was just required to take
15 what they called national board and a
16 state board. And the national board was
17 science, written test, and the state
18 board was the same with some practical
19 work.

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

22 A. No.

23 Q. Have you ever been convicted
24 of a crime?

25 A. No.

0105

1

105

2 Q. At some point during your
3 care of Mr. , did you feel that
4 he was abusing Tylenol medications that
5 you had prescribed for him?

6 A. Yes.

7 Q. And what led you to that
8 belief?

9 A. Because he was asking too
10 much.

11 Q. What do you mean?

12 A. Every time he said he has
13 pain and he needs Tylenol #4, and I got
14 suspicious and I stopped it, I didn't
15 give him.

16 Q. Is Tylenol #4, Tylenol with
17 codeine?

18 A. Yes.

19 Q. And is that particular
20 medication addictive?

21 A. Yes.

22 Q. And had he been prescribed
23 that particular medication by any other
24 doctor or dentist, to your knowledge?

25 A. No, I don't know.

0106

1

106

2 Q. Did you ever try to give
3 Mr. other pain relievers that
4 were non-narcotic and did not have

5 codeine in them?
6 A. I probably did, but he did
7 not take it. He refused. He said it
8 doesn't work.
9 I'm sure I did recommend
10 something else but he said no.
11 Q. And did you have a
12 conversation with him about your belief
13 as to his need for the Tylenol #4 and why
14 you would no longer prescribe it for him?
15 A. Yes, I'm sure I did.
16 Q. Do you remember specifically
17 when it was you talked to him about it?
18 A. No. Not specifically, no.
19 Q. Do you recall specifically
20 what it was that you said to him and what
21 he said to you?
22 A. Not really, but I'm sure
23 that I remember that I was talking to him
24 about it. I said it's no good and he
25 swore that he's not using it for that

0107

1 purpose, that I remember.
2 Q. How do you know?
3 A. He said that, I remember
4 that.
5 Q. I don't understand.
6 A. He said that he's not using
7 it, he just using it for pain, he's not
8 using for drug.
9 Q. Meaning the dental pain that
10 he was experiencing?
11 A. Right.
12 Q. And was it your impression
13 that he was not using it for dental pain?
14 A. He was not telling the
15 truth.
16 Q. How do you know?
17 A. My feeling.
18 Q. Do you have any objective
19 evidence or proof that he was not using
20 it for his dental concerns?
21 A. No.
22 Q. Let's look in the year 2006,
23 Doctor, did Mr. miss dental
24 appointments in March?
25

0108

1 We know he came to you
2 March 20 and March 22nd.
3 A. Right.
4 Q. What was on March 29th?
5 A. I sutured him. I put some
6 sutures on that extraction and I removed
7 the sutures.
8 Q. So, those initials what do

107

108

10 they mean?
11 A. Suture removal.
12 Q. And he never returned to
13 your office after that date, correct?
14 A. Again, he came on 3/29/06.
15 Q. After that visit he never
16 came to you again?
17 A. No. After that, no.
18 Q. Do you know a
19 Dr. ?
20 A. I have heard of him. Not
21 personally.
22 Q. Did you ever speak to that
23 doctor Mr. and his dental
24 care?
25 A. Dr. .

0109

109

1
2 Q. Yes.
3 A. I never talked to him.
4 Q. Did you ever see any records
5 from Dr. about his care and
6 treatment of Mr. ?
7 A. No, I haven't.
8 Q. Do you know a Dr.
9 ?
10 A. Do I know him?
11 Q. Yes.
12 A. No, I don't know him, but I
13 sent the X-rays to him by his request.
14 Mr. asked, I have
15 written it here, patient requested X-ray
16 to be sent to Dr. , address inside
17 the chart and I did send it, yes.
18 Q. And when was that that you
19 sent those records to him?
20 A. 3/29/06.
21 Q. Did you ever speak to Dr.
22 about Mr. ?
23 A. No.
24 Q. Did you ever see any
25 treatment records from Dr. about

0110

110

1
2 Mr. ?
3 A. No.
4 Q. Did Mr. -- again,
5 going back to the September 21, 2005
6 periodontal surgery that he had in your
7 office --
8 A. Yes.
9 Q. -- did Mr. ever
10 ask you for another doctor to complete
11 the rest of the procedure that he had
12 been having on that date?
13 A. No.
14 Q. Did you ever, once Dr.

15 left your employment, did you ever
16 have another periodontist come in to work
17 in your office?

18 A. Yes.

19 Q. Who was that?

20 A. Dr. .

21 Q. And was he working in your
22 office?

23 A. She.

24 Q. She.

25 From when to when was she

0111

1

111

2 working in your office?

3 A. I don't know exactly. I can
4 find out, but I don't know.

5 Q. Was she working in 2005?

6 A. I don't think so.

7 Q. Was she working in 2006?

8 A. Yes.

9 Q. Did Mr. ever see
10 her?

11 A. No.

12 Q. For any reason whatsoever?

13 A. No.

14 Q. Did you ever recommend that
15 Mr. see her for any particular
16 reason?

17 A. No, I think she came after
18 he left. I think, I don't remember
19 exactly, but I think she came after that.

20 Q. Now, Doctor, I'd like you to
21 look, please, at your X-rays for the last
22 X-ray you have tooth number 3, if you can
23 do that either by full mouth series or
24 bite wing or PA, whatever you have.

25 You know what, let me do it

0112

1

112

2 this way, Doctor. I'm going to ask you
3 some questions first and then I'll ask
4 you to look at the X-rays.

5 As of the last visit that
6 Mr. had in your office in
7 March of 2006, are you able to tell me
8 the condition of various teeth at that
9 time other than --

10 A. Say it again, I'm sorry.

11 Q. Sure.

12 As of the last visit in your
13 office, March 29, are you able to tell me
14 what the condition of certain teeth were
15 as of that time?

16 In other words, if I asked
17 you what was the condition of tooth
18 number 3 in March of '06, are you able to
19 tell me just looking at your notes?

20 A. No because I don't have
21 those X-rays, I gave it to him. I did
22 not keep a copy.
23 Q. Which X-rays are you talking
24 about?
25 A. 3/29/06. I sent it to Dr.

0113

1 113

2
3 Q. You told me you removed
4 sutures on that date.
5 A. 3/29/06?
6 Q. Yes.
7 MR. : No, there is two
8 notes, Gerald, there is two notes on
9 the 29th.
10 A. Oh, yeah. Suture removal
11 and then I went to the other page, right.
12 I did that and then I took X-rays of his
13 whole mouth on that date, but on a
14 different page I wrote it down, I marked
15 it on a different page.

16 Q. Can I see that, Doctor?
17 A. Suture removal and the next
18 page is a new page.

19 MR. OGINSKI: I need a copy
20 of this page.

21 MR. : Okay.

22 A. You have it, no?

23 Q. No.
24 Doctor, why did you take a
25 full mouth series on March 29th?

0114

1 114

2 A. Just wanted to evaluate to
3 see what is the best thing for him to do.

4 Q. And did you have a
5 conversation with Mr. on
6 March 29th about your opinions?

7 A. Yes.

8 Q. And what do you recall
9 telling him about your evaluation of the
10 films?

11 A. I think I told him that the
12 best thing for him is to not to make
13 those permanent crowns and go for regular
14 dentures to replace the missing teeth and
15 that's it. Don't spend so much money,
16 that's the X-rays, I think, for that day,
17 yes.

18 Q. I'm going to show you X-rays
19 that your office provided to me which has
20 a penciled-in date of March 29, 2006 --

21 A. Yes.

22 Q. -- and ask you to look at
23 them.

24 Are those the full mouth

25 series that you referred to in the

0115

1

115

2

March 29th note?

3

A. Yes.

4

Q. Can you look, please, at

5

tooth number 3 --

6

A. Yes.

7

Q. -- and tell me what is your

8

observation and interpretation of the

9

condition of tooth number 3?

10

A. I can't believe the decay.

11

Q. I'm asking your opinion,

12

Doctor.

13

A. Decayed beyond repair.

14

Q. Is there subgingival decay

15

on number 3?

16

A. Yes.

17

Q. Is it restorable?

18

A. No.

19

Q. Why?

20

A. Because it's too far gone.

21

Q. Do you see that only the

22

roots are present?

23

A. Yes.

24

Q. Is there any clinical crown

25

on that tooth?

0116

1

116

2

A. No. There is a root canal

3

and post.

4

Q. Can you tell me how long

5

that decay existed?

6

A. Not by looking at this, no.

7

Q. Can you tell me the decay,

8

based on the extent of the decay, that it

9

existed for a significant period of time?

10

A. Probably.

11

Q. Can you look, please, on the

12

same full mouth series dated March 29,

13

2006 at tooth number 4.

14

Do you see that there is an

15

existing crown on number 4?

16

A. No.

17

Q. There is no crown?

18

A. No. Just a root canal and

19

post, no crown.

20

Q. I'm sorry, you said just

21

root canal and post?

22

A. Post.

23

Q. Just a post?

24

A. Yes. Maybe a temporary

25

crown, not a permanent crown.

0117

1

117

2

Q. On number 4, Doctor, do you

3

see any crown, permanent or temporary?

4 A. You can't see temporary
5 because, see --
6 Q. I'm only asking based on the
7 X-ray.
8 A. No, you can't see on the
9 X-ray, you cannot see because temporary
10 crown is made up of acrylic and it
11 doesn't show on the X-ray.
12 Q. Is there any decay visible
13 on tooth number 4?
14 A. No.
15 Q. Is there any lingual decay?
16 A. I can't tell.
17 Q. And, Doctor, when you
18 described the location of decay, do you
19 use terms like mesial, lingual and
20 occlusal?
21 A. No.
22 Q. What terms do you use to
23 describe the location of decay in a
24 tooth?
25 A. For a filling?

0118

1
2 Q. Yes. 118
3 A. We do mention the location,
4 definitely, the mesial, distal, buckle,
5 lingual, yes, on the chart we mark it
6 down, I can tell what it is, but it is
7 decay, like this number 3, beyond repair.
8 It doesn't matter where the decay is.
9 Q. On the chart that you have
10 in front of you, Doctor, the diagram, is
11 there anything that you wrote down for
12 tooth number 4?
13 A. It has root canal and post
14 on it.
15 Q. And does your diagram
16 indicate when you made that observation
17 or notation?
18 A. On that day?
19 Q. Which day?
20 A. 3/29/06 I did the exam, I
21 marked down whatever existed in the
22 mouth.
23 Q. How do you know that that
24 examination refers to the 3/29
25 conversation as opposed to any other day

0119

1 119
2 that you saw the patient?
3 A. Because it's in this page.
4 I took this X-ray. I used the new page
5 so it doesn't interfere with the previous
6 ones, so whatever is written in there was
7 written on that date.
8 Q. And had you formed any

9 treatment plan as to what he needed to
10 have done based on that tooth?

11 A. No. No, because that had
12 come to an end with our relationship.

13 Q. Let's look at the X-ray,
14 Doctor, tooth number six.

15 A. Yes; decay of the mesial.

16 Q. Are you able to tell how
17 long that decay existed?

18 A. No.

19 Q. Again, can you determine
20 whether that decay has existed for a
21 significant period of time?

22 A. I can't tell. Probably.
23 Probably, yes.

24 Q. Look, please, at tooth
25 number 9.

0120

1

120

2 A. Nine, yes.

3 Q. Do you see any decay visible
4 on that X-ray?

5 A. Yes.

6 Q. Is that mesial decay?

7 A. Yes.

8 Q. Are you familiar with the
9 term lingual opening, if something has an
10 opening on the lingual side?

11 A. No.

12 Q. Is there a post in number 9?

13 A. Yes.

14 Q. And can you tell me whether
15 that is, the post is of sufficient length
16 or whether it's short or long or
17 something else?

18 A. It's all right.

19 Q. Look, please, at tooth
20 number 11.

21 A. Eleven?

22 Q. Yes.

23 A. Yes.

24 Q. Is there any decay visible
25 on number 11?

0121

1

121

2 A. No, but that's probably the
3 filling.

4 On distal?

5 Q. Yes, is there any distal
6 decay there?

7 A. No. This is one that was
8 done by my son, the bonding, that
9 probably, the bonding, it shows just like
10 that.

11 Q. Tooth number 12 --

12 A. Yes.

13 Q. -- is that visible on the

14 X-rays that you have there?
15 A. No, it's gone.
16 Q. You had done the extraction
17 before taking the X-rays?
18 A. Yes.
19 Q. Look, please, at tooth
20 number 30.
21 A. Thirty.
22 Q. Do you see evidence of root
23 canal having been done on number 30?
24 A. Yes.
25 Q. And can you tell me how many

0122

1
2 canals were filled in that root canal? 122
3 A. Three.
4 Q. And are there more than
5 three canals in that particular tooth?
6 A. No.
7 Q. Are you familiar with the
8 term coronal tooth structure?
9 A. Meaning what?
10 Q. I'm going to ask you if you
11 know what it means, coronal tooth
12 structure?
13 A. It refers to the crown of
14 the tooth.
15 Q. Is there any evidence --
16 A. No crown --
17 Q. Hang on, Doctor, I haven't
18 asked the question.
19 I'm looking at tooth number
20 30 for the March 29, 2006 films, is there
21 any evidence of leakage into the canals?
22 A. Not really.
23 Q. When you say not really,
24 tell me what you mean?
25 A. No, the root canal looks

0123

1
2 good, there is no leakage. The 123
3 leakage -- you see, the tooth had root
4 canal, I don't know when, it had been a
5 long time, I guess, whatever it was, but
6 because it was not restored by a crown
7 the coronal structure is gone, there is
8 no more there, it has been decayed to the
9 point that the tooth roots are almost
10 separated, you can see by decay.
11 Anything is possible, bacteria can get in
12 from there, but --
13 Q. When you use the term
14 leakage of the canals, what is your
15 understanding of that? What do you
16 understand that to mean?
17 A. I really don't know leakage.
18 Okay. Maybe if the tooth has root canal,

19 as I said before. In most cases we make
20 a post and a crown and that usually saves
21 the tooth. And I've done this many times
22 in my life and it's worked perfectly.
23 But if you let it go, you do root canal
24 the tooth has no protection, if you don't
25 do the post and crown immediately almost

0124

1

124

2

it can go bad.

3

4

Q. So, you're saying that if
the post and crown is not put on a tooth
that has root canal within a certain
period of time --

7

A. Especially with certain
people.

9

10

Q. -- that the tooth will go
bad and need to be extracted?

11

A. Right.

12

Q. How much time do you --

13

14

A. You can't tell how much,
some people it's fast, some people it's
slow. Depends on the individual people
and their habits.

17

18

19

20

21

22

Q. And is it your opinion,
Doctor, that the reason that
Mr. , some of his teeth that
had the root canal, that those teeth
needed to be extracted was because he
delayed in coming back to you?

23

A. That is right, yes.

24

25

If you look at tooth number
18 that we spoke about, the root canal

0125

1

125

2

post and crown and it's perfectly good,
still there.

3

4

5

6

7

Q. Let's go back to, if you
can, I'm going to ask you to look at your
notes again now starting with the office
visit on September 30, 2004.

8

A. What date?

9

Q. September 30, 2004.

10

11

He saw you again
October 7th, 2004?

12

A. Right.

13

14

Q. The next visit, 10/14, he
missed?

15

A. Right.

16

Q. The next visit was 2/16/05?

17

A. Right.

18

19

Q. Root canal was done on
March 1st, '07, right?

20

A. Right.

21

Q. He returned again a week
later on March 8?

22

23

A. Yes.

24 Q. And March 15 he missed?
25 A. Right.

0126

1 126

2 Q. March 22, he missed?

3 A. Right.

4 Q. And returned again on

5 April 12, '05?

6 A. Right.

7 Q. And what was done on

8 April 12, '05?

9 A. A pattern for post was made.
10 We make a pattern for post and we send it
11 to the lab they change it into cast
12 posts.

13 Q. Did you ever tell
14 Mr. that because he had missed
15 two visits for the two weeks before he
16 came in on April 12th that that would
17 have affected his treatment of the
18 particular tooth, either 12 or five?

19 A. No, because it was not
20 covered by anything, it had root canal
21 done.

22 Q. Turn, please, to the next
23 page, the visit 4/19/05.

24 A. Right.

25 Q. What did you do on that

0127

1 127

2 visit?

3 A. The pattern I made on the
4 previous week was no good, something was
5 wrong, it wouldn't fit, so I made a new
6 pattern, Dura Lay. Dura Lay is the name,
7 that's a material that we use to make the
8 post.

9 Q. Okay. And on the following
10 visit, the following week April 26, 2005,
11 he missed that visit, right?

12 A. Right.

13 Q. On May 23rd, '05, he missed
14 that visit?

15 A. Right.

16 Q. And the following day,
17 May 24th he also missed that visit?

18 A. Yes.

19 Q. Did you ever talk to him
20 about why he was missing these visits?

21 A. That was the whole problem.

22 Q. I'm only asking whether you
23 did.

24 A. Yes, definitely.

25 Q. Doctor, did you ever ask him

0128

1 128

2 why he was missing his appointments?

3 A. Not really. I just told him
4 that he's missing too many appointments.
5 Q. Because of these
6 appointments that he missed on
7 February 26, May 23rd, May 24th, is it
8 your opinion that that time delay before
9 you put the post, before you cemented the
10 post on tooth number five, that that
11 caused a problem or --
12 A. It can.
13 Q. I'm not talking about can.
14 A. No.
15 Q. He was next seen on
16 June 7th, '05 where you cemented the post
17 on number five, correct?
18 A. Right.
19 Q. And the next visit was
20 July 26, which he missed?
21 A. Right.
22 Q. He returned the following
23 day, July 27th?
24 A. Yes.
25 Q. You did the Dura Lay for

0129

1
2 number 12?
3 A. Right.
4 Q. Did that missed appointment
5 cause any deterioration of his dental
6 condition?
7 A. No.
8 Q. He was seen again
9 August 2nd, '05, he was seen again
10 August 23rd '05, and you wrote at that
11 time, referred to periodontist for
12 evaluation?
13 A. Right.
14 Q. And you're talking about Dr.
15 ?
16 A. Yes.
17 Q. And on August 30 you
18 prescribed him Amoxicillin, correct?
19 A. Right.
20 Q. On September 30, '05 your
21 son saw him for the bonding?
22 A. Right.
23 Q. On September 13, '05, what
24 was done?
25 A. Remake temporary number 12.

0130

1
2 He made, that's my son, he made a
3 temporary crown on number 12.
4 Q. And September 21, '05 there
5 was a prescription for Amoxicillin by
6 phone, right?
7 A. Right.

129

130

8 Q. And he did actually see the
9 periodontist as you had directed on
10 September 21, 2005?

11 A. Right.

12 Q. There was an appointment on
13 10/4/05 that he missed?

14 A. Right.

15 Q. And he came to the office on
16 10/26/05, correct?

17 A. Right.

18 Q. And what was done on that
19 visit to tooth number 4?

20 A. Root canal. Root canal --

21 Q. It says, added to TP, what
22 does that mean?

23 A. Treatment plan. Because it
24 wasn't in the plan for root canal, but --

25 Q. Doctor, the missed

0131

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2 appointment for October 4, 2005, did that
3 cause a deterioration of Mr.
4 dental condition in any way?

5 A. Well, you can't say a
6 particular thing, but that was the
7 overall over the years.

8 Q. I'm asking specifically
9 because I'm trying to pinpoint -- hold
10 on.

11 You told me that it's your
12 opinion that because he missed many
13 appointments over time that it affected
14 his dental condition.

15 A. Yes.

16 Q. So, I'm trying to identify
17 which appointments that he missed caused
18 the deterioration or accounted for the
19 deterioration in his mouth.

20 A. We spoke about that number 3
21 and number 30 definitely had gone bad
22 because of the delays.

23 Q. Hang on, I'm not there.

24 I'm asking now about
25 October 4th, the missed appointment.

0132

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2 A. No, he was fine. He was
3 okay.

4 Q. He saw you again on 11/3/05,
5 right?

6 A. Right.

7 Q. And was seen again in the
8 office on 12/5/05?

9 A. Right.

10 Q. The next visit was on
11 12/12/05 for suture removal?

12 A. Right.

13 Q. Prep, right?
14 A. Right.
15 Q. He came back on 12/27/05?
16 A. Right.
17 Q. And what was done on 12/27?
18 A. Crown inserted.
19 Q. And there's no scheduled
20 visit that he missed between 12/27 and
21 3/20, correct?
22 A. Right.
23 MR. : Just let me ask
24 one question: Besides the two teeth
25 numbers 3 and 30, what other teeth

0133

1 133
2 were affected, if any, due to delays
3 or missed appointments?
4 THE WITNESS: Number 12,
5 apparently, because there was no --
6 he was supposed to come back within a
7 week after I inserted the crown,
8 that's the normal thing, but he did
9 not. He came back three
10 months later for cementing the crown.
11 So, there was no missing, he
12 didn't make an appointment.
13 MR. : Off the record.
14 (A discussion was held off
15 the record.)
16 MR. : 3, 12, 30 any
17 other teeth that were affected
18 because of delays or missed
19 appointments?
20 THE WITNESS: No.
21 Q. Going back to 3/22/06, when
22 you wrote that tooth number 12 seems
23 decayed, did you write in your note where
24 the decay was present?
25 A. No.

0134

1 134
2 I can see in the X-ray, I
3 took X-rays, that's when I took an
4 X-ray --
5 Q. We discussed that.
6 A. -- having pain, yes.
7 Q. And going up to 12/5/05,
8 when you extracted tooth number 15 and
9 you wrote number 15 seems decayed under
10 the crown, did you identify where there
11 was decay?
12 A. I didn't indicate, but I can
13 see in the X-ray, I have the X-rays,
14 because before there was a marking
15 12/5/05, previous page, four bite wings
16 and two PA's, and the next page 12/5/05,
17 patient has decay in number 15, have to

18 remake the bridge, that's what was my
19 intention, that apparently after I took
20 the bridge off I found that it was not
21 restorable and it had to come out.

22 Q. As of October 2005, was it
23 still your opinion that Mr.
24 had evidence of bone loss throughout his
25 mouth?

0135

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2 A. Yes.

3 Q. And after he had seen the
4 periodontist on 9/21/05, is there
5 anything in your notes that would
6 indicate that you had referred him out to
7 a periodontist again for additional
8 evaluation?

9 A. Not after that, no.

10 Q. And is there any reason, as
11 you sit here now, as to why there is no
12 additional referral to a periodontist to
13 evaluate his generalized bone loss after
14 October of 2005?

15 A. I'm sorry, say it again.

16 Q. Sure.

17 You've told me that there is
18 no indication that you referred him to
19 the periodontist after October 2005.

20 A. Right.

21 Q. I'm asking you why not? If
22 you felt that he had generalized bone
23 loss in his mouth, why wasn't he sent to
24 a periodontist at some point after
25 October 2005?

0136

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2 A. Because he never came back
3 for that treatment anyhow.

4 Q. What treatment?

5 A. That Dr. had written
6 down. I'm sure it says upper right,
7 upper left --

8 Q. Don't tell me you're sure,
9 Doctor, unless you can read it and tell
10 me.

11 A. I can't. I can't read it
12 really.

13 Q. So, when you say he never
14 came back?

15 A. For that.

16 You see, you cannot force a
17 patient to do something.

18 Q. Hold on, Doctor, I'm just
19 asking specifically because we see that
20 he did return to your office on many
21 visits from October '05 to the end of
22 March '06, and there is no notation here

23 to indicate that you have suggested or
24 recommended he see a periodontist again
25 to do anything else.

0137

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2 A. Okay. Yes.

3 Q. So, my question is, did you
4 refer him to a periodontist at any time
5 after October 2005?

6 A. No.

7 Q. Okay.

8 MR. : I want to make a
9 request on the record, this looks
10 like an original to me.

11 THE WITNESS: Do you need a
12 copy? I can make a copy.

13 MR. : Where was it just
14 now?

15 MR. OGINSKI: It was mine.

16 MR. : So, you have an
17 original, that's fine.

18 I guess he must have given
19 it to your client. We just want a
20 copy of this.

21 MR. OGINSKI: Sure.

22 Q. Doctor, when you sent Dr.
23 the full mouth series, what did
24 you send him, an original or copies?

25 A. Original, those are the

0138

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2 ones, where did you get that from?

3 MR. OGINSKI: Off the
4 record.

5 (A discussion was held off
6 the record.)

7 MR. OGINSKI: Back on the
8 record.

9 Q. Doctor, you've established
10 that Mr. saw the periodontist
11 in your office on September 13, 2000, and
12 also --

13 MR. : 9/21/2005.

14 Q. Five years in between.

15 Is there anything in your
16 note from the year, from September 2000
17 up until September 2005 that indicates
18 that you referred the patient to the
19 periodontist for which the patient just
20 never went?

21 A. Yes, 9/26, again.

22 Q. I'm sorry, what date?

23 A. 9/26/2000.

24 Q. Can you read that note,
25 please?

0139

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2 A. That's Dr. 's
3 handwriting.
4 Q. Does that say, patient very
5 sensitive and apprehensive?
6 A. Right.
7 Q. Will do -- can you read
8 those initials under local?
9 A. Under local I understand,
10 but I don't know what else.
11 Q. So, after 9/26/2000, up
12 until 9/21/05, did you ever recommend
13 that the patient go to a periodontist?
14 A. Between what, 2005?
15 Q. You know what, I'm sorry.
16 On December 4, 2001 you have
17 a note that you did a full mouth series.
18 A. One second. December 1 --
19 Q. December 4 says referred to
20 periodontist again.
21 A. Correct.
22 Q. Spoke to Dr. Coss, patient
23 cannot stop taking aspirin now.
24 A. That's why I stopped
25 treatment.

0140

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2 Q. Is there any note after
3 December 4th, '01, indicating that you
4 wanted Mr. to see the
5 periodontist again?
6 A. After '01?
7 Q. Yes.
8 A. Yes, after '05, I think, I
9 guess.
10 Q. I'm looking, Doctor, at
11 October 7, '04, you have a note that says
12 referred to periodontist.
13 A. Yes.
14 Q. And what was your reason for
15 referring him at that time to the
16 periodontist?
17 A. The same reason all the
18 time. I've been referring him to
19 periodontists any time I could, any time
20 I told him. Something may not be written
21 even here, but I'm sure I had been on his
22 case about his gums.
23 Q. What did Mr. tell
24 you as to why he was not scheduling an
25 appointment with the periodontist?

0141

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2 A. He wouldn't answer.
3 Q. He wouldn't give you any
4 reason?
5 A. The same way that he
6 wouldn't answer me why he was delaying

140

141

7 his appointments with me.
8 Q. Just so I'm clear, Doctor,
9 when you told him he needed to see the
10 periodontist, he wouldn't respond at all
11 or give you any reason as to why he
12 wouldn't to go?
13 A. I really don't remember but
14 apparently he didn't.
15 Q. When you would see him for
16 dental treatment after you had made the
17 referral and you realized looking at your
18 notes he hadn't been to the periodontist,
19 did you ask him --
20 A. Yes.
21 Q. -- why didn't you go, why
22 didn't you make an appointment?
23 A. That's exactly what the
24 problem.
25 Q. What did he say?

0142

1 142
2 A. I'll go, I'll go, I'll go,
3 something like that.
4 You don't know him. I know
5 him. I've known him for 20 years
6 already, that's the way he is. I cannot
7 answer for him, unfortunately.
8 MR. : If you remember,
9 you remember. If you don't, you
10 don't.
11 THE WITNESS: I don't.
12 All I remember is that it
13 came to a point that I said, look,
14 you're not listening to me, you're
15 not doing what you're supposed to do
16 and so you're not getting anywhere.
17 Q. Did you again refer him to
18 the periodontist after October 7, 2004
19 that you have recorded in your notes?
20 A. October 7th, 2004.
21 Q. I see August 23rd, '05.
22 A. As I said, you know, any
23 opportunity I got I nagged, I told him,
24 and he wouldn't listen. He wouldn't
25 listen.

0143

1 143
2 Q. Now, the periodontal
3 treatment that occurred on September 21,
4 2005, he was charged \$3,060?
5 A. No, he was given an estimate
6 that's how much it's going to cost.
7 Q. How much did it actually
8 cost?
9 A. That's what he wrote down,
10 he gave him that figure, 3,060.
11 Q. And, in fact, according to

12 your computerized billing record it says
13 he was charged a total of 2,700?

14 A. I don't know. He paid 2,500
15 that day.

16 Q. Doctor, looking again at
17 your computerized billing record for that
18 visit, based upon the information that
19 appears there, osseous surgery, flap, and
20 then part of the word is cut off, can you
21 tell me what was done based on that
22 information?

23 MR. : Is that, that's
24 ' work, right?

25 THE WITNESS: Yes, but this
0144

1 144
2 doesn't mean that it was done.

3 Q. What does it mean?

4 A. It means that that was an
5 estimate for this kind of work, this is
6 what's going to be charged. That's my
7 understanding.

8 MR. : Do you know this?
9 Look, if it's your
10 understanding if this is a different
11 doctor.

12 THE WITNESS: No, I know.

13 This is the treatment plan,
14 this says what it needs, what has to
15 be done, what has to be paid, what is
16 the bill, that doesn't mean it was
17 done.

18 MR. : Was it done?

19 THE WITNESS: I don't think
20 so.

21 Q. Why don't you think so?

22 A. I can't read. I don't think
23 on that day he did surgery, but it was --

24 Q. Why would he pay \$2,500 if
25 the surgery wasn't done?

0145 145
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2 A. Why not? He pays according
3 to, for the account, I guess, but --

4 Q. Wait. Hold on, Doctor.
5 You just told me that the
6 patient made a payment of \$2,500.

7 A. Yes, he did, it's written
8 here I see and it's written here.
9 (Indicating.)

10 Q. So, would it be --

11 A. I can't read if he did the
12 surgery or not. I don't think so for one
13 reason because if he needs surgery at
14 that day, 9/21/05, patient usually has to
15 come back in two weeks for suture
16 removal. I don't see that. Because he

17 had the surgery, he'll put sutures.
18 Q. Do you see that he
19 prescribed Motrin toward the bottom of
20 his note?

21 A. Yes.

22 Q. Do you know why he would
23 prescribe Motrin if no procedure was
24 done?

25 A. No.

0146

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2 Q. I want you to assume that
3 Mr. has testified that he did
4 have some type of surgery to his upper
5 gums and his upper mouth in and about
6 September 2005.

7 A. Okay.

8 Q. Assuming that to be true,
9 can you tell me, based either the billing
10 record or on the note by the
11 periodontist, what was done?

12 A. I can find that out. I can
13 call him and ask him to read this to me.

14 Q. Do you know where Dr.
15 works now?

16 A. Manhattan somewhere.

17 Q. What is Dr. 's first
18 name?

19 A. .

20 Q. And do you know where he
21 lives?

22 A. Somewhere in Manhattan.

23 Q. Are you able to get in touch
24 with him by telephone if you need to?

25 A. Yes.

0147

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2 Q. I would just ask that you
3 make a search of Dr. 's current
4 work address and provide it to your
5 attorney.

6 A. Okay.

7 A. I can do it now.

8 Q. No, no.

9 Is there anything in the
10 billing note for 9/21/05 that tells you
11 what was either proposed or what was
12 done?

13 A. I can't tell.

14 Q. What does that information
15 that's on there mean to you, if anything,
16 where it says osseous surgery and it has
17 a few other words on there?

18 A. This means that this is a
19 treatment plan, done or not, I don't
20 know.

21 Q. What is the plan?

22 A. Here, plan, osseous surgery.
23 Q. What does that mean? Does
24 that mean bone surgery?
25 A. Bone surgery, gum surgery.

0148

1 148

2 Q. That would be for --
3 Hold on, Doctor.
4 That would be for the upper
5 right, upper left and where else?

6 A. Upper right, upper left and
7 lower right.

8 Q. And do you know why that
9 treatment was being proposed or why that
10 treatment was done?

11 A. Because he needed it, he had
12 periodontal problems.

13 Q. Other than what you have in
14 front of you and your office note, is
15 there any way for you to know in any
16 other fashion whether the periodontist
17 actually performed any type of
18 periodontal surgery on 9/21/05?

19 A. I have to ask him what did
20 he write here.

21 MR. : Can you tell from
22 your notes afterwards?

23 THE WITNESS: No, that I
24 can't.

25 Q. After March 29, 2006, did

0149

1 149

2 you ever have any conversation with
3 Mr. ?

4 A. March 29?

5 Q. After the last visit.

6 A. Just the X-rays. He wanted
7 the X-rays to be sent to Dr. and I
8 did send it.

9 Q. Other than that, did you
10 ever speak to him again?

11 A. No.

12 Q. When he would appear in your
13 office for dental visits, did he come
14 with any family member?

15 A. Not that I know about.

16 Q. Did he ever come with any
17 friend to accompany him?

18 A. No.

19 Q. Did you ever suggest that he
20 have implants?

21 A. No.

22 Q. Did you ever send him out to
23 any oral surgeon at any time from 2004 to
24 2006?

25 A. I don't think so.

0150

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2 MR. : There was that
3 wisdom tooth, but was that before?
4 MR. OGINSKI: That was
5 before.
6 THE WITNESS: No, that was
7 before.
8 Q. I noticed within your record
9 there is a letter from the Office of
10 Professional Medical Conduct or the
11 Department of Health, did you ever
12 respond in writing to any inquiry made by
13 the Department of Health in response to
14 any claim that Mr. has made?
15 A. Recently?
16 Q. I'm sorry, let me just pull
17 this out.
18 You have a letter dated
19 April 9, 2007 from the State Education
20 Department --
21 A. Yes.
22 Q. -- about an investigation
23 concerning Mr. treatment.
24 A. Yes.
25 Q. Did you ever reply to this

0151

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2 letter in writing?
3 A. Yes.
4 Q. Do you have a copy of that
5 letter?
6 A. I have the original.
7 Q. May I see that?
8 MR. : When did you
9 respond to it?
10 THE WITNESS: I didn't, my
11 lawyer --
12 MR. : Well, let me --
13 I'm going to object to that
14 then.
15 Make your request for it,
16 okay, and then I got to look into
17 that. Okay. I got to look into
18 that.
19 Q. Doctor, just so I'm clear,
20 are you saying that your attorney
21 responded to that inquiry or to that
22 letter?
23 A. Yes.
24 MR. : I don't know. It
25 wouldn't have been me.

0152

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2 Q. Did you personally respond
3 to that letter in any fashion?
4 A. No.
5 Q. Did you ever have any

6 conversation with anyone from the State
7 Department?

8 A. No.
9 MR. OGINSKI: Thank you,
10 Doctor, we're done.

11 MR. : Let me say, all
12 requests made please put it in
13 writing.

14
15 (Time Noted: 12:55 p.m.)
16

17
18 -----
19 , D.D.S.

20 Subscribed and sworn to
21 before me on this _____day
22 of _____, 2007.
23
24

25 _____
NOTARY PUBLIC

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, D.D.S.

22

SUBSCRIBED AND SWORN TO BEFORE ME

23

THIS ____ DAY OF _____, 20__.

24

25

NOTARY PUBLIC

MY COMMISSION EXPIRES