

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF ONONDAGA: CIVIL PART

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RJI No. 33-11-1413
Index No. 2011-2128

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6 KELLY VARANO, As Parent and Natural Guardian
Of Infant JEREMY BOHN,

7

Plaintiffs,

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vs.

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10 FORBA HOLDINGS, LLC, FORBA, LLC n/k/a
LICSAC, LLC; DD MARKETING, INC.;
SMALL SMILES DENTISTRY, PLLC.

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...

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Including: NAVEED AMAN, DDS; KOURY
BONDS, DDS; YAQOOB KHAN, DDS,

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Defendants.

14

Jury Trial

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September 25, 2013

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Onondaga County Courthouse
401 Montgomery Street
Syracuse, New York 13202

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21 Before:

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HONORABLE DEBORAH KARALUNAS
Supreme Court Justice

23

And a Jury

24

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Dr. Robert Andrus - Direct Examination

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1 (After luncheon recess)

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3 THE COURT: Anything to address before we bring
4 the jury in?

5 Mr. LEYENDECKER: No, your Honor.

6 (Whereupon, the jury was then brought back into
7 the courtroom)

8 THE COURT: Everybody have a good lunch?

9 JUROR MEMBER: Yes, ma'am.

10 THE COURT: All right. Before we begin with
11 proof, just prior to breaking for lunch, we heard some
12 testimony about a lawsuit by New FORBA against Old FORBA.
13 I let that testimony come in for purposes of impeachment,
14 not as evidence in chief. I just wanted to explain that
15 to you.

16 Okay. You may proceed.

17 Mr. LEYENDECKER: Your Honor, the Plaintiffs
18 call Dr. Robert Andrus.

19 THE COURT: Okay.

20

21 Dr. ROBERT ANDRUS, having been called as a witness, being
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY Mr. LEYENDECKER:

24 Q. Good afternoon, Dr. Andrus.

25 A. Good afternoon.

1 Q. I'm going to hand to you a copy of the deposition that
2 you gave in this case, so if you feel the need to refer to it
3 for any reason, I want you to feel free to do so from time to
4 time. If you have an issue remembering something that you
5 said, I may refer you back to your deposition, but it's there
6 if you need it, okay, sir?

7 A. All right.

8 Q. You are a dentist?

9 A. I am.

10 Q. And when did you become a dentist?

11 A. In summer of 2000.

12 Q. Summer of 2000. Where did you go to dental school?

13 A. University of Colorado.

14 Q. You worked for both Old FORBA and New FORBA?

15 A. I did.

16 Q. Who -- incidentally, where was your first job out of
17 dental school?

18 A. My first job was with the DeRose Children's Dental
19 Clinic.

20 Q. Is that the clinic in Pueblo?

21 A. That is the Pueblo clinic.

22 Q. Okay. So your first job was at the Pueblo clinic?

23 A. That's right.

24 Q. And you worked with Old FORBA, and then after New
25 FORBA bought Old FORBA, you continued along with New FORBA?

1 A. I did. I had a contract with them.

2 Q. One of the things that you did when you were working
3 for Old FORBA was to go evaluate clinics and report back to
4 Dan; is that correct?

5 A. What I would really do is go to a clinic that he had a
6 shortage at and help them.

7 Q. You did evaluate when you went and you reported back
8 to Dan, did you not, sir?

9 A. I would talk to him, yes.

10 Q. Now, am I right that you handled essential regional
11 management needs for Old FORBA?

12 A. I did not. That job did not become mine until New
13 FORBA.

14 Q. Am I right that at or about the time of the
15 transaction, just before the transaction in which New FORBA
16 bought Old FORBA, that you were personally training every
17 doctor that FORBA was hiring?

18 A. Not personally. They would follow us and observe us
19 while we worked in the Pueblo clinic.

20 Mr. LEYENDEKER: May I approach the witness,
21 your Honor?

22 THE COURT: Yes, you may.

23 Q. Dr. Andrus, let me show you what I believe are some
24 notes you jotted down and ask you if you recognize those as
25 your notes?

1 Mr. FIRST: What is the exhibit number?

2 A. Yes, I believe these are notes on the contract.

3 Mr. LEYENDECKER: Your Honor, at this time, I
4 would like to offer for impeachment purposes Plaintiff's
5 Exhibit Number 773.

6 THE COURT: Any objection?

7 Mr. FIRST: I don't think it's being offered
8 into evidence.

9 Mr. LEYENDECKER: I'm offering it into evidence
10 as Exhibit Number 773. The reason is it's being used to
11 impeach Dr. Andrus's testimony on the matters I just asked
12 him about.

13 Mr. FIRST: I would object. It's not on the
14 list. The first I have seen this is right here, right
15 now.

16 THE COURT: I think for impeachment purposes,
17 you can utilize Exhibit 773. I'm not going to receive it
18 into evidence, but certainly you can use it for
19 impeachment purposes.

20 Mr. LEYENDECKER: May I display it, your Honor?

21 THE COURT: Not displayed.

22 Q. Doctor, let me ask you to look at your notes which are
23 identified as Exhibit 773.

24 A. Yes.

25 Q. Did you write in here that, "I personally train every

1 doctor that FORBA hires" --

2 Mr. HULSLANDER: Objection. Objection, Judge.
3 That's not into evidence. It's inappropriate to ask that
4 question.

5 THE COURT: Wait a second, Mr. Hulslander. Your
6 objection is what?

7 Mr. HULSLANDER: He's reading from a document
8 that's not in evidence; therefore it's inappropriate.

9 THE COURT: All right. I'm going to sustain the
10 objection.

11 Q. Dr. Andrus, do your notes refresh your memory that
12 your view at the time, just before New FORBA purchased Old
13 FORBA, do these notes refresh your recollection --

14 A. I was involved in the training of the doctors, and
15 this is a document that talks -- where I'm talking about my
16 salary and why I am worth something to New FORBA.

17 Q. And did you say in your document that "I personally
18 train every doctor that FORBA hires"?

19 Mr. HULSLANDER: Objection.

20 Mr. McPHILLIAMY: Objection.

21 THE COURT: I'm going to sustain as to form.

22 Q. Dr. Andrus, does this, these notes of yours, refresh
23 your memory that prior to the time you went to work for New
24 FORBA that you believed you handled the essential regional
25 management team for Old FORBA?

1 A. Under Old FORBA, there was a concept that there would
2 be regional managers, but there was no contract to be a
3 regional manager or title or business cards of that sort.
4 But that was to be my role with New FORBA, although I think
5 that there may have been another regional manager.

6 Q. You were aware that Dr. Knott was also a regional
7 manager for Old FORBA?

8 A. I think he was, yes.

9 Q. And continued in that role with New FORBA?

10 A. He was the first of the regional managers, is my
11 recollection.

12 Q. And do you recall that there was also a Dr. Sean
13 Barnwell? Was he around when you were there?

14 A. Yes.

15 Q. And did he also continue with New FORBA?

16 A. I don't know what his role was with Old FORBA, but I
17 think that he oversaw some clinics in the south.

18 Q. Okay.

19 A. But I'm not sure.

20 Q. Did I hear you say that these were your notes that you
21 put down to reflect the things that you were going to tell
22 New FORBA as to why you were worth the compensation that you
23 were going to ask of them?

24 A. These are notes on my contract.

25 Q. Okay. And one of the things you were going to ask New

1 FORBA to do was pay you \$5,000 a month for each clinic that
2 you would agree to be the designated owner in?

3 A. That's what I was getting before and that's what I
4 wanted to receive.

5 Q. So Old FORBA was paying you \$5,000 a month to be the
6 designated owner in a variety of clinics around the country?

7 A. I'm not sure what you're asking. All the clinics?

8 Q. No, in a variety. Well, does this document, Exhibit
9 773, refresh your memory that Old FORBA was paying you \$5,000
10 a month to be the designated owner in Atlanta, Makin,
11 Augusta, Savanna, Richmond, Roanoke and Oklahoma City?

12 A. My recollection is that it was only -- I was only
13 receiving that in the Georgia clinics.

14 Q. Okay. All right. And am I right, Dr. Andrus, that
15 you were not -- you never received any profits from your
16 designated ownership in those clinics, either with Old FORBA
17 or New FORBA?

18 A. I did not.

19 Q. And am I right that as your status as a designated
20 owner in those clinics, that all the profits went to FORBA,
21 either Old FORBA or New FORBA?

22 A. There was management agreements in place on each
23 clinic.

24 Q. And the effect of those management agreements, both
25 Old FORBA and New FORBA, was that Old FORBA and New FORBA

1 | were entitled to the profits, if any, and you weren't
2 | entitled to those, right?

3 | A. I would have to read the management agreements, but
4 | that's my recollection.

5 | Q. Okay. Now, the truth is, acting as a designated owner
6 | of a clinic for Old FORBA and New FORBA was a bit of a burden
7 | on you because it put your license at risk, right?

8 | A. Yes, sir.

9 | Q. And so in exchange for being paid \$5,000 a month to
10 | act like you were the owner --

11 | A. No, I was the owner.

12 | Q. Okay. Well, you were the owner?

13 | A. Yes, sir.

14 | Q. But you didn't -- you weren't entitled to any of the
15 | profits, right?

16 | A. I received that compensation that we talked about.

17 | Q. They paid you \$5,000 a month to be the designated
18 | owner?

19 | Mr. HULSLANDER: Objection, Judge. It's
20 | repetitive. It's the third time he asked him that.

21 | THE COURT: Overruled.

22 | Q. Did you tell New FORBA that you wanted to be paid
23 | another \$5,000 a month for any additional new clinics that
24 | you'd be a designated owner in because it was a burden,
25 | future ownership?

1 A. Well, since it's the first time I've seen this
2 document since I wrote it, I would have to read it back over,
3 because I've got a lot of notes to myself.

4 Q. Take your time.

5 A. My recollection of that is I don't know whether that
6 exact amount is correct, but that I wanted a fixed amount
7 that I could count on and not be tied to something that was
8 based on production and profit, that kind of thing.

9 Q. Right. You wanted to be guaranteed a payment by the
10 Old FORBA -- and Old FORBA had guaranteed you payment to act
11 as the designated owner?

12 A. That's what I was doing prior, so...

13 Q. And you wanted new FORBA to pay you to be the
14 designated owner, too, right?

15 A. That's what I was trying to get to, the same amount I
16 was making from before.

17 Q. Now, you do understand, Dr. Andrus, that the corporate
18 practice of dentistry is prohibited pretty much throughout
19 the United States?

20 A. I understand that.

21 Q. And you understand that the corporate practice of
22 dentistry is prohibited in the State of New York?

23 A. I do.

24 Q. And one of the things that you understand that means
25 is that corporations cannot own dental clinics in New York,

1 right?

2 A. Yes, sir.

3 Q. And corporations couldn't own the dental clinics in
4 those states in which you agreed to serve as the designated
5 owner for both Old FORBA and New FORBA?

6 A. I was the owner. I don't know where this designation
7 comes from. I was the owner of the clinic.

8 Q. You were the owner. You were the owner of the clinic,
9 but yet you weren't entitled to a profit and the corporation
10 was guaranteeing you a \$5,000 payment a month --

11 A. There were management service agreements in place on
12 each clinic.

13 Q. Dr. Andrus, is it proper to attempt to influence a
14 dentist to maximize treatment?

15 A. No, sir.

16 Q. I'm writing, "not proper to influence a dentist to
17 maximize treatment." You were the designated owner in a
18 boatload of clinics after the sale, were you not?

19 A. I was.

20 Q. And --

21 A. I think I was part-owner.

22 Q. And you and Dr. Knott, for example, paid Dr. Padula as
23 part of this process of becoming a designated owner for New
24 FORBA, you and Dr. Knott paid Dr. Padula \$10 for the Syracuse
25 clinic, right?

1 A. I'm not sure of the exact amounts because they were
2 bulk checks written to each person, but it's somewhere around
3 that amount.

4 Q. Okay. How about if we look at Page 64 of your
5 deposition and see if that refreshes your memory?

6 A. Okay.

7 Q. Pages 64, beginning on Line Number 3. Are you with
8 me?

9 A. Yes.

10 Q. The question there was: "So you guys paid ten bucks
11 for the Syracuse clinic; is that right?" And your answer
12 was --

13 A. Yes, five each.

14 Q. Five each. And do you think a real owner only pays
15 ten dollars for an up-and-running dental clinic?

16 A. I'm sorry; I don't understand the question.

17 Q. Well, who did you -- did you negotiate with Dr. Padula
18 a ten dollar price tag so you could own that clinic?

19 A. Well, there was a large movement as Old FORBA was sold
20 to New FORBA, and I was to become the owner and then I was
21 told this is what we're paying.

22 Q. My question is: Do you think a real owner only has to
23 pay \$10 --

24 A. I think it would --

25 Q. -- to purchase a clinic?

1 A. I think it would depend on profitability of a clinic,
2 so if it was a clinic that was losing money or making money.

3 Q. And you knew at the time that you paid the \$10 that
4 you weren't entitled to the profit, right?

5 A. I was not, no, under my contract.

6 Q. Now, am I right that in New York after you paid \$5 for
7 half of the Syracuse clinic, or about that time, you went and
8 obtained your license in New York?

9 A. Yes, sir.

10 Q. Because you couldn't represent to the State of New
11 York that you were the owner of the clinic --

12 A. I --

13 Q. -- unless you were a licensed dentist there, right?

14 A. I had started the license process earlier in the fall.

15 Q. Is it true, Dr. Andrus, that you falsified your
16 license application to the New York authorities in connection
17 with that license?

18 A. I did not falsify. I did not.

19 Q. Let's look at Page 80 of your deposition. I'm
20 beginning on Line Number 12, where the question is: "So they
21 asked you whether you had falsified your licensures in New
22 York and Nevada; is that right?" Do you recall this
23 testimony?

24 A. I do recall this testimony.

25 Q. And your answer was: "They asked us that, yes,"

1 right?

2 A. Yes.

3 Q. And later you were asked, "And did you say, 'No, we
4 didn't falsify our licensure materials'?" And your answer
5 is, "No, I did not say that," right? Do you see that, Dr.
6 Andrus?

7 A. Yes, I do.

8 Q. It goes on to say: "When were these false materials
9 filed?" And your answer was: "I believe this happened in
10 late August, early September of 2006."

11 A. Yes, it was late August or early September, I had
12 signed my application to the State of New York and I sent it
13 in and the secretary did something over the computer and
14 informed me that she did it.

15 Q. And so you did falsify your application. It had to do
16 with whether you had taken certain C.E., continuing
17 education, courses, right?

18 A. My understanding was that she received back notice
19 from New York that there needed to be a C.E. on emergency
20 preparedness, and rather than coming to me and asking me to
21 take it, she took it.

22 Q. And then you certified that you'd taken it. That's
23 what you certified to the authorities?

24 A. I had already signed the document.

25 Q. Let's look at Page 81, Line 17 of your deposition.

1 A. All right.

2 Q. And the question was: "You certified that you took a
3 course that the state required you to take before you get
4 licensed; you certified that you took it when you didn't; is
5 that correct?" And your answer was?

6 A. Yes.

7 Q. Now, did you pressure and try to influence doctors in
8 ways that were designed to maximize FORBA's revenues?

9 A. No, I did not. I just tried to keep doctors busy,
10 working in the clinic.

11 Q. Let me show you what has been admitted in this case as
12 Exhibit Number 44. Exhibit number 44, Dr. Andrus, is a
13 document that you prepared for Mr. DeRose with your
14 observations from Denver; do you see that?

15 A. Yes, sir.

16 Q. You remember this document, don't you, sir?

17 A. I do.

18 Q. All right. Down here under Item Number 5, and by the
19 way, let me just ask you this: If we scroll back up to the
20 top, there's a fax header date of July '03. Do you think you
21 created this around the summer of '03, Dr. Andrus?

22 A. I believe so, if that's the date, yes.

23 Q. If you look under Item 5, this is one of the
24 situations where you were reporting back to Mr. DeRose your
25 evaluations of the Denver clinics, right?

1 A. Yes, sir.

2 Q. Number 5, you say: "I'm going to try and go work in
3 Aurora next month," and that was another FORBA clinic in the
4 Denver area, right?

5 A. Yes.

6 Q. "Not to bore you with the dental side but they are,
7 quote, leaving money on the table, end quote, because
8 diagnosis is the most important thing we do in the clinics."
9 And what you wanted to do in Aurora, Dr. Andrus, was to
10 influence the dentists there to diagnose in ways so as to not
11 leave money on the table, correct?

12 A. No, sir. What I mean by that is that their diagnoses
13 was inadequate for the decay that was being represented on
14 the charts in the clinic itself upon examination.

15 Q. Well, let me ask you this: Isn't it the treating
16 dentist's decision -- isn't it within their domain to
17 evaluate their patients and assess what they need and make
18 those determinations uninfluenced by somebody else trying to
19 get them to treat more? Isn't that their domain?

20 A. Well, that is, but I think it's also my domain as a
21 licensed dentist there in Colorado to look at their
22 treatments and what their plan is and if they have missed
23 something, to point that out and at least have a discussion
24 about it or put it in the chart.

25 Q. And what you wanted them to do was to diagnose in ways

1 | so that it wouldn't leave money on the table, right?

2 | A. I just used a term as if -- it was a figure of speech,
3 | but my point was to make sure that you get the treatment
4 | correct for the children.

5 | Q. "First, Dr. Mike, 3:16." What's that a reference to?

6 | A. Mike and I went to bible study together.

7 | Q. Dr. Michael DeRose?

8 | A. Yes, sir.

9 | Q. And you're saying in bible study, you were learning
10 | about how to diagnose young children so that you didn't leave
11 | money on the table?

12 | A. No, sir. It was just a tongue-in-cheek reference to a
13 | bible verse, because proper diagnosis is the key to doing
14 | dentistry, in my opinion. You've got to write it down.

15 | Q. It's the key to doing dentistry the FORBA way, right?

16 | A. No, I think it's the key to all dentistry is to get
17 | the diagnosis correct.

18 | Q. The decision of whether to use a papoose board is
19 | within the matter of the treating dentist's domain, right?
20 | That's his decision?

21 | A. That's true.

22 | Q. And you wanted to influence the doctors that were
23 | working in the FORBA clinics to be more aggressive with their
24 | use of papoose restraints, right?

25 | A. One of the things I was worried about was them not

1 using it if they needed to use it, because it's unsafe to
2 work on a child that's going to be unstable and move.

3 Q. Let's look at Number 7. And, by the way, don't you
4 believe it would be up to the treating dentist, as they're
5 the one seeing the child, to make whatever determinations are
6 necessary?

7 A. I do.

8 Q. "Dan, they need lots of work on the proper way to do
9 this business," and this business was the FORBA business,
10 right, sir?

11 A. No, dentistry.

12 Q. "We're going to get in trouble. They use sub-quality
13 X-rays all of the time and they are way too paranoid about
14 the pedo wrap. The pedo wrap is the papoose board, right?

15 A. Yes, sir.

16 Q. And your view was: "Hell, they only have two. They
17 need five." They need to be using it more; that was your
18 view?

19 A. No, I was concerned if they only had two, as busy a
20 clinic as it was with four dentists, that they wouldn't be
21 able to use it when they needed it.

22 Q. Because FORBA wanted its dentists to aggressively use
23 papoose boards, didn't they?

24 A. No.

25 Q. Let's look at Number 10: "Chief, I can make things

1 bust ass with Dr. Amir." Where did he work?

2 A. In Aurora.

3 Q. "I just think that you and Dr. Eddie" -- that's Dr.
4 Eddie DeRose, who you worked for in Pueblo?

5 A. Right.

6 Q. And what you wanted to let Mr. DeRose know, Mr. Dan
7 DeRose, know is that he and his father needed to know that
8 the quote, unquote, orientation of the new doctors was
9 critical, and if they got oriented in the new FORBA way, the
10 company would bust ass in terms of revenues, right?

11 A. No, I think it was important that these doctors
12 understand what the process is as far as working with
13 children in a Medicaid population.

14 Q. Let me hand you what's been marked as Exhibit 148 in
15 this case. Exhibit 148 is a January 29th, 2007 FORBA
16 Holdings, LLC goals and objectives. Do you recall that
17 meeting in Nashville, sir?

18 A. I do.

19 Mr. LEYENDECKER: Plaintiffs offer Exhibit 148,
20 your Honor.

21 THE COURT: Any objection?

22 Mr. HULSLANDER: No objection.

23 Mr. FIRST: No objection.

24 Q. Okay.

25 THE COURT: Exhibit 148 received.

1 (Whereupon, Plaintiff's Exhibit Number 148 was
2 received)

3 Q. Dr. Andrus, one of the purposes of this meeting was to
4 develop goals for each of the New FORBA directors, right?

5 A. Yes.

6 Q. And to be clear, we're now in the new FORBA time frame
7 with this particular exhibit?

8 A. Yes, sir.

9 Q. So we had -- the new FORBA folks had a meeting to
10 develop your goals and Dr. Knott's goals going forward,
11 correct?

12 A. Yes.

13 Q. And Mr. Lindley, the C.E.O. of New FORBA, and Mr.
14 Smith, the president of New FORBA, participated in the
15 development of your goals?

16 A. I believe they told us to write them.

17 Q. Okay. Did you discuss the goals with Mr. Lindley and
18 Mr. Smith at the meeting, what your goals would be?

19 A. I remember a discussion on the goals.

20 Q. And let me get you to turn over to Page Number 18041.
21 That's the little number at the bottom of the page. That's
22 the page that deals with Dr. Bob Andrus's goals for 2007?

23 A. Yes, sir.

24 Q. Are you with me?

25 A. I am.

1 Q. One of your goals, Dr. Andrus, was to grow the revenue
2 by 13.8 million, or 27 percent, in your territory, over what
3 it had been in 2006, right?

4 A. That's what it says, yeah. I think due to the
5 building of new clinics.

6 Q. And one of the ways that you were going to do that,
7 down here, under this "Increase the revenue," was to
8 institute treatment planning assessment once a month for low
9 performers. That's the same as Exhibit Number 44, isn't it?
10 You're going to go to the clinics that are not making enough
11 revenue, and you're going to teach them how to treatment-plan
12 so they don't leave money on the table?

13 A. Or I think what I take it to mean is that you're going
14 to do an assessment of what they're doing in their clinic as
15 far as treatment plan.

16 Q. And you're going to do that because you want them to
17 put more work on the kids so that it increases the revenue
18 from the prior year. That's the point of this, right, Dr.
19 Andrus?

20 A. Or point out to them that they are writing down
21 treatment plans and not executing, not doing them.

22 Q. Well, how come you were only doing that for the low
23 performers?

24 A. Actually --

25 Q. Let me finish. If what you were interested in was

1 making sure the kids got good quality care, that everybody
2 was being treated the way they should be treated, then why is
3 it that you were only doing it for the people that weren't
4 meeting FORBA's revenue expectations?

5 A. I did it on all my visits to the clinics. I would
6 pull charts and look at them.

7 Q. Is there anything in these 2007 goals, which the
8 highest officers participated in, that said you're going to
9 increase the revenues by looking at all the clinics or just
10 the low performers?

11 A. I think it's just a bullet point to focus on the low
12 performers.

13 Q. Let me hand you what has been marked as Exhibit 59A
14 and ask you if you can confirm -- this is another one of
15 those; you can set that over there, Doctor -- if you can
16 confirm 59 is another one of those memos that you wrote back
17 to Dr. Dan DeRose with your observations about clinics?

18 A. Yes.

19 MR. LEYENDECKER: Plaintiffs offer Exhibit 59A.

20 THE COURT: Any objection?

21 Mr. FIRST: I'm going to object to it. There's
22 a lack of foundation for that.

23 THE COURT: I'm going to sustain the objection.

24 MR. LEYENDECKER: I asked him, your Honor, if
25 Exhibit 59A reflected -- may we approach?

1 THE COURT: Yes.

2 (Whereupon there was a discussion at the bench)

3 BY MR. LEYENDECKER:

4 Q. Dr. Andrus, the first page of Exhibit 59A, you
5 addressed that to Dr. Dan -- excuse me, to Dan, and that's
6 Dan DeRose?

7 A. Yes, sir.

8 Q. So you prepared this during the Old FORBA time frame?

9 A. I did.

10 Q. Both the first page and the pages that follow?

11 A. I believe so.

12 Mr. LEYENDECKER: Plaintiffs offer Exhibit 59A,
13 your Honor.

14 THE COURT: Any objection?

15 Mr. FIRST: No objection.

16 THE COURT: Exhibit 59A received.

17 (Whereupon, Plaintiff's Exhibit 59A was received
18 in evidence)

19 Q. Let's take a look there on the first page of Exhibit
20 59, Dr. Andrus. This paragraph begins with: "We --" let me
21 back up; I apologize. I want to orient you to what we're
22 talking about. At the top, we say: "Going into a new
23 start-up clinic." Are you with me?

24 A. Yes.

25 Q. And these were your thoughts to Mr. Danny DeRose about

1 | what FORBA should be doing in the new start-up clinics,
2 | right?

3 | A. Well, he would have the doctors come visit and watch
4 | us in Pueblo, and he would send them in in groups of usually
5 | three to four, in a five-doctor clinic, and those doctors
6 | would split up and watch us as we worked throughout our day,
7 | so I think part of my frustration in this letter is I wanted
8 | to make sure that we had some feedback to them about how that
9 | week went.

10 | Q. Let's look at what you describe. This paragraph that
11 | begins with "we need." "We need to get all of the crying and
12 | restraint and basic pedo restraint issues taken care of up
13 | front," right? And so we're talking about the training of
14 | these new dentists in the Pueblo clinic and issues you were
15 | having as it relates to use of the papoose board, right, sir?

16 | A. I really am referring to making certain that they
17 | understand what it's going to be like to work in a Medicaid
18 | population with children that are very poor and their parents
19 | and what that's going to be like, because it's going to be
20 | drastically different than doing dentures on Grandmother, and
21 | kids do cry and there are behavior things you have to work
22 | through.

23 | Q. You're talking about the use of a papoose board here,
24 | right?

25 | A. On the patients that need it, based on the doctor's

1 decision, yes.

2 Q. And you say: "First thing" and then "let them know
3 that they will need to decide to do it our way" and our way
4 is the FORBA way, correct, sir?

5 A. No, I just feel like reinventing how to restrain
6 someone may be dangerous to the patient. If I say to you,
7 "Sir, you come over here and hold the legs; she can hold the
8 arms, and I'll try to do this," without using the proper
9 device that's medically decided to use in a case where
10 somebody doesn't want something done.

11 Q. And what you want your new dentists to know was how
12 FORBA was restraining those children with papoose boards, and
13 if they weren't going to do it that way, the message should
14 be "go find another place to work," right?

15 A. I really felt like if they're not comfortable with a
16 situation where patients are going to cry and you're going to
17 have to work through this issue to get these teeth fixed,
18 that we need to address that up front, not have it come out
19 months later, that these people are working on only the
20 teenager because they don't like crying children.

21 Q. You say: "I don't need A-holes trying to reinvent the
22 wheel," and the A-holes were the doctors, right?

23 A. I shouldn't have used that sort of terminology. I get
24 colorful.

25 Q. But the A-holes are the doctors? Is that who you're

1 referring to?

2 A. Yes.

3 Q. And the wheels is FORBA's way of using papoose
4 restraints, right?

5 A. No, it refers to the proper way to handle patients
6 with protective immobilization.

7 Q. The second page of Exhibit 59A, is that a form letter
8 that you drafted that you were suggesting be sent to all the
9 lead dentists?

10 A. I think this is something that I put together mostly
11 for myself so that I would --

12 Q. Help you figure out what you were going to say to
13 people, something like that?

14 A. Well, really, really to bring about what is the role
15 of a lead doctor in one of these large dental clinics.

16 Q. Okay. Let's do that. Let's focus on what you thought
17 the role was of a lead doctor in one of these clinics, and I
18 want to go down to the bottom of your letter, this paragraph
19 right here, beginning with: "All dentists." You say: "All
20 dentists need to know that the more work that they can get
21 done in one hour, the more money they drive to the bottom
22 line of daily production and the greater the overall success
23 of the clinic will be." That's what you wanted the lead
24 dentists to know, sir?

25 A. That's what I wrote down, but what I meant was if you

1 | can just stay busy with what's coming in front of you, that
2 | everyone is going to be happy.

3 | Q. I'm curious about that. If that's what you meant --
4 | you seem like you're a fairly educated guy -- you simply
5 | could have written that down, couldn't you, if that's what
6 | you really meant?

7 | A. Well, they are very busy clinics. I think some people
8 | don't understand how many people are calling, how many people
9 | are trying to get in, and having dentists that weren't
10 | working or addressing helping out in the clinic was becoming
11 | a real drag on the ones that were working. So I wanted the
12 | dentists to know that if they would just do their job, would
13 | get to work, that the clinic would be successful.

14 | Q. You could have written that down, right? Let me ask
15 | you, is it true that FORBA did not want its dentists to refer
16 | patients to other practitioners?

17 | A. I would think the important thing was to have a good
18 | reason for doing so.

19 | Q. Let me hand you Exhibit Number 153 and ask if you can
20 | identify this as a June 25th, 2007 region report that you
21 | sent to your bosses at New FORBA?

22 | THE COURT: I'm sorry, Mr. Leyendecker, what was
23 | that exhibit number?

24 | Mr. LEYENDECKER: Exhibit Number 153, your
25 | Honor.

1 A. Yes, it is.

2 Mr. LEYENDECKER: Plaintiffs offer Exhibit 153.

3 THE COURT: Any objection?

4 Mr. HULSLANDER: My objection is that it's
5 irrelevant.

6 Mr. FIRST: Same objection.

7 Mr. Leyendecker: Your Honor, I intend to ask
8 him about the entry on Reno on page 1058339.

9 Mr. HULSLANDER: Our position is what happened
10 with respect to Reno is completely irrelevant.

11 THE COURT: Overruled. Exhibit 153 received.

12 (Whereupon, Plaintiff's Exhibit Number 153 was
13 received in evidence)

14 Q. Dr. Andrus, again, I would like to focus you on the
15 base number 1058339.

16 A. Yes.

17 Q. And before I do that, am I right that your bosses, the
18 C.E.O, Mr. Lindley, and the president, Mr. Smith, wanted you
19 and the other regionals to send them reports on the things
20 you thought were important and needed to be addressed?

21 A. Yes, they wanted us to report; yes, they did.

22 Q. This is one of those weekly reports?

23 A. It is.

24 Q. And on page 1058339, down there in the Reno section --

25 A. Yes.

1 Q. -- what you told your bosses at New FORBA was that
2 "trouble brews as we caught them referring out pedo." That's
3 a reference to the fact that the dentists at Reno were
4 referring young children to other practitioners, right?

5 A. They were. It's a reference to that, and they were
6 doing it to avoid work in general, on very simple things,
7 extraction of small deciduous teeth, emergencies, things that
8 could have easily been handled in the clinic.

9 Q. Isn't it the treating dentist's decision as to whether
10 he feels comfortable and qualified to treat or whether he
11 should refer it to another practitioner?

12 A. It is.

13 Q. But you told your bosses there was trouble brewing
14 because they were doing that and you wanted to put a stop to
15 it, right?

16 A. I told them about it because had I been the doctor
17 working there, I easily could have taken care of a lot of
18 these things that were being referred out.

19 Q. Well, let me ask you something. What did you mean
20 when you said, "we caught them"? Isn't that an indication
21 that FORBA didn't want them referring when you say, "we
22 caught them"?

23 A. I guess I should have said, "I found them to be."

24 Q. Am I right that one of the ways you kept track of what
25 the doctors were doing in the clinics was by receiving

1 provider productivity reports?

2 A. I do remember receiving those reports.

3 Q. And that's a report that identified the amount of
4 production per dentist, for each of the dentists?

5 A. Yeah, I think it has a lot of different numbers on it.

6 Q. Okay. Let me show you Exhibit Number 158. This is a
7 December 21st, 2007 e-mail to you and others regarding
8 provider productivity report?

9 A. It is.

10 Q. Are you familiar with that?

11 A. Yes.

12 Mr. LEYENDECKER: Plaintiffs offer Exhibit 158,
13 your Honor.

14 THE COURT: Any objection?

15 Mr. FIRST: Excuse me. I didn't hear the date.
16 Is that a New FORBA document?

17 Mr. LEYENDECKER: Exhibit 158, December 2007, I
18 believe, correct, Dr. Andrus?

19 THE WITNESS: Yes, December 2007.

20 Mr. HULSLANDER: I'm going to object -- to the
21 extent that it includes information other than Syracuse --
22 as irrelevant.

23 Mr. FIRST: Same objection.

24 THE COURT: I'm going to receive Exhibit 158.

25 (Whereupon, Plaintiff's Exhibit Number 158 was

1 received in evidence)

2 Q. Dr. Andrus, am I right that you received these
3 production per dentist reports -- let me ask you: Which
4 phrase are you more comfortable with, production per dentist
5 or provider productivity report? They're the same thing, but
6 I want to use whatever you're comfortable with.

7 A. I think they were provider productivity reports.

8 Q. And they do show production per dentist, right?

9 A. They list the clinics, the dentists that work in them
10 and probably ten different metrics.

11 Q. Am I right that you received these reports as part of
12 the management team at New FORBA?

13 A. I did, along with others, yes.

14 Q. Mr. Smith and Mr. Lindley, the C.E.O. and president
15 were receiving them, too?

16 A. Yes.

17 Q. Let's just for a minute look over perhaps the first
18 page to get an idea of what's being shared with new FORBA
19 management. Each dentist in every clinic is reflected on
20 this report?

21 A. Yeah, it lists the clinics and the dentists that work
22 there.

23 Mr. LEYENDECKER: Chuck, if we could please zoom
24 in on the top header row to get an idea? Maybe just zoom
25 in on part of it, the first half.

1 Q. Okay. So part of the management team of New FORBA,
2 you all were getting by doctor, how many patients, how many
3 procedures, how many procedures per patient, how much
4 revenue, right, the average revenue, the average revenue
5 per patient.... these were the kind of stats that you were
6 receiving in these provider productivity reports?

7 A. Yes. Kevin Reilly worked for the company from the
8 point of -- with Old FORBA and New FORBA, but he put these
9 kind of metric numbers together off the computers.

10 Q. Okay. Am I right that you -- am I right that you
11 really appreciated receiving these reports?

12 A. I believe that the important thing was to be able to
13 take a look if there's zeros or numbers for how many patients
14 that they are seeing.

15 Q. Let me hand you what has been marked as Exhibit Number
16 160 and ask you if Exhibit 160 is an e-mail you sent on
17 December 5th, 2007, to Jake West regarding provider
18 productivity reports?

19 A. Yes.

20 Mr. LEYENDECKER: Plaintiffs offer Exhibit 160,
21 your Honor.

22 THE COURT: Any objection?

23 Mr. HULSLANDER: You said 160, right?

24 Mr. LEYENDECKER: Yes, sir.

25 Mr. HULSLANDER: No objection.

1 THE COURT: Exhibit 160 received.

2 (Whereupon, Plaintiff's Exhibit Number 160 was
3 received in evidence)

4 Q. Let's first look at the bottom of this e-mail, Dr.
5 Andrus.

6 A. Yes.

7 Q. This is an e-mail from Jake West on December 5th, 2007
8 to you, Dr. Knott, Dr. Reilly, a copy to Mr. Smith, Mr.
9 Lindley and others; do you see that?

10 A. Yes.

11 Q. And it relates to provider productivity reports,
12 right?

13 A. Yes.

14 Q. And at the top was your response to Mr. West's having
15 told you that the attached report will be sent out every
16 other Friday starting 12/7/07. Do you see that?

17 A. I do.

18 Q. Let's look what you wrote. That's thank you with --
19 what are those after the "thank you" --

20 A. I just held down the button on the Blackberry.

21 Q. Inadvertent?

22 A. I wanted to put a few down; I don't know why, but
23 thank you, thank you for the report.

24 Q. You were very appreciative of these and knowing you
25 were going to get these every other Friday, right?

1 A. I was just glad to get a response.

2 Q. Because you wanted to know, you wanted that production
3 per dentist information at your fingertips?

4 A. The metric -- most important to me was the number of
5 patients seen, because one of the things that you have to
6 understand is you need to take a grain of salt with how
7 much -- if you're working in the hygiene area and you're
8 examining patients, your revenue per doctor is going to
9 change, but you can be working very hard seeing a lot of
10 different patients. It's one of the more difficult jobs, so
11 I think you have to take it with a grain of salt.

12 Q. Dr. Andrus, isn't it the truth that you wanted these
13 provider productivity reports so that you could know which of
14 the doctors were getting after it and which weren't?

15 A. Which ones were working, yes.

16 Q. Which ones were getting after it. Let me show you
17 Exhibit 161 and ask if you can identify this as an August
18 14th, 2007 e-mail that you sent regarding the Boise clinic?

19 A. It is.

20 Mr. LEYENDECKER: Plaintiffs offer Exhibit 161,
21 your Honor.

22 Mr. HULSLANDER: Irrelevant. Doesn't involve
23 Syracuse.

24 Mr. FIRST: Same.

25 THE COURT: Overruled. Exhibit 161 received.

1 (Whereupon, Plaintiff's Exhibit Number 161 was
2 received in evidence)

3 MR. LEYENDECKER: I don't think that's 161,
4 Chuck. I tell you what -- that's not 161. There we go.
5 Thank you, Chuck.

6 Q. Dr. Andrus --

7 A. Yes.

8 Q. This e-mail that you sent -- I tell you what, let's
9 start at the bottom of the e-mail so we get everything in
10 context, shall we? Alicia Strebe, and do you remember who
11 Alicia was?

12 A. I think the office manager.

13 Q. Of the Boise clinic?

14 A. I think so.

15 Q. And she had sent production, number of patients seen,
16 patients pulled and -- by the way, is the number of patients
17 pulled, is that a reference to how many patients are
18 converted from a hygiene patient to an operative patient?

19 A. Yes.

20 Q. And that's one thing Old FORBA and New FORBA were
21 tracking, how many conversions they had that day?

22 A. Yeah, I don't know if they kept track of that matrix
23 when they started and when they finished, because it's
24 something I look at, because you get about a 30 percent, 40
25 percent cancellation rate on the appointments. So if you're

1 set for operative patients for eight of them, maybe six show
2 up. That's going to open up some slots. And if the parents
3 want it done that day, discussion with them by the doctor,
4 and there's time available in a chair, they can do it that
5 day. That's what's that tracks.

6 Q. And Old FORBA and new FORBA were pressuring the
7 clinics to convert, weren't they?

8 A. I don't think we were pressuring them to convert.
9 This was about working.

10 Q. Let's look at the top of your e-mail that's a response
11 to this production that you got. It says: "Good job on
12 production." So you thought they were working hard, right?
13 That's what "good job" on production means?

14 A. Yep.

15 Q. You think they're working hard. "I need you and Dr.
16 Maki to pull the doctors' production at the end of the week
17 and look at it and let us know who is not getting after it
18 and why." So you were telling the office manager, go pull
19 the production per dentist so I can know who's not getting
20 after it?

21 A. Actually, it was my advice to Maki to take a look at
22 it and evaluate why it's being done -- if it's being done by
23 these three, why isn't it being done by this one?

24 Q. So even though you know they're working hard, you want
25 the office manager to let you know, after using production

1 per dentist, who is getting after it and who is not?

2 A. Yeah, but I don't know if this is prior to the time
3 the report is being produced essentially or not.

4 Q. Did Old FORBA and new FORBA use budgets?

5 A. I know that New FORBA used budgets.

6 Q. And for what purpose?

7 A. To give a benchmark.

8 Q. Did it reflect the amounts of revenue New FORBA
9 expected the dentists -- the clinics to generate on a monthly
10 basis?

11 A. I believe it did.

12 Q. Let me hand you what's marked as Exhibit 163 and ask
13 if you can identify this as another one of your weekly
14 reports from February 2007?

15 A. It is.

16 Mr. LEYENDECKER: Plaintiffs offer Exhibit 163.

17 THE COURT: Any objection?

18 Mr. HULSLANDER: Objection to the extent it
19 doesn't address Syracuse. Irrelevant.

20 Mr. FIRST: Same.

21 THE COURT: Overruled. Exhibit 163 received.

22 (Whereupon, Plaintiff's Exhibit Number 163 was
23 received in evidence)

24 Q. Okay. Dr. Andrus, I would like to focus your
25 attention to the last page of your weekly report from

1 February, and in particular I want to ask you a couple of
2 questions about your comments on the Colorado Springs clinic.
3 Are you with me, down there at the bottom?

4 A. Yes, sir.

5 Q. Colorado Springs, that's one of the clinics that you
6 were responsible for?

7 A. Yes, sir.

8 Q. "They need to get working!" Exclamation point. "I'm
9 going to light a fire under them on Monday," right?

10 A. Yes.

11 Q. And what you told your bosses at New FORBA was that
12 you were in relentless pursuit of the budget number, because
13 that's what you were?

14 A. That's what I wrote down, trying to achieve the goal.

15 Q. The fact is you wanted those dentists to chase the
16 number that you were in relentless pursuit of, right?

17 A. I mean, that's a term that I believe I used on an
18 e-mail regarding if you put the budget number too high, it
19 won't do you any good because you can't get there, so... it's
20 an important thing to set a goal in a position where it's
21 achievable.

22 Q. You remember the e-mail we're about to look at, don't
23 you, sir?

24 A. Yes, sir.

25 Q. Let me hand you Exhibit 164, the May 5th, 2007 e-mail

1 and just confirm for us that's what it is?

2 A. Yes, I wrote this.

3 Mr. LEYENDECKER: Plaintiffs offer Exhibit 164,
4 your Honor.

5 Mr. HULSLANDER: Objection, irrelevant.

6 THE COURT: Overruled. Exhibit 164 is received.

7 (Whereupon, Plaintiff's Exhibit 164 was received
8 in evidence)

9 Q. Dr. Andrus, who is Rodney Cawood?

10 A. He was the -- I think the accountant for New FORBA,
11 head of accounting.

12 Q. Some kind of financial person, is it safe to say?

13 A. Yes.

14 Q. And on May 25th, was he responsible for the budgets?

15 A. I really don't recall, but I think that he had a hand
16 in it.

17 Q. The subject of this e-mail is daily production, see
18 that?

19 A. Yep.

20 Q. And you say to Mr. Cawood: "You need to call me about
21 Greely and their budget number. Second highest in Colorado."
22 Was Greely one of the Colorado FORBA clinics?

23 A. It was a brand-new one, yes.

24 Q. "People can't chase numbers that are not realistic."

25 Am I right that you wanted people to chase that budget

1 number?

2 A. In that e-mail, I would choose different wording. But
3 my point is that if the goal, if it's too high, it is
4 unattainable completely and why was it set that high?

5 Q. Am I right, Dr. Andrus, that FORBA paid dentists like
6 kings to produce?

7 A. I put that in an e-mail as well.

8 Q. Let's look at the e-mail. You put that in an e-mail,
9 Dr. Andrus, because that's what FORBA was doing, paying them
10 like kings to produce, right?

11 A. Well, he was a high-paid dentist and he was not happy
12 with his salary, with his base salary.

13 Q. Let's see if we can identify Exhibit 166 as an e-mail
14 that you wrote to Dr. Peter -- Exhibit 166, March 16th, 2007
15 e-mail to Dr. -- I believe that's Dr. Peter DeBuck; can you
16 confirm that, sir?

17 A. Yes, it is.

18 Mr. LEYENDECKER: Plaintiffs offer Exhibit 166.

19 THE COURT: Any objection?

20 Mr. HULSLANDER: Yes, objection, irrelevant.

21 Doesn't refer to Syracuse.

22 THE COURT: Exhibit 166 received.

23 (Whereupon, Plaintiff's Exhibit 166 was received
24 in evidence)

25 Q. Dr. Andrus, let's look at your instructions to Dr.

1 Debuck. It's on the second page of this e-mail. Can you
2 zoom in a little bit, please, Chuck, or maybe scroll down for
3 me? And I want to focus you in on Line 3, sir, and part of
4 your instructions to Dr. DeBuck was for him to be constantly
5 aware of the large amount he makes and make it worth the
6 company's time to pay him like a king, and the company, sir,
7 was New FORBA, right?

8 A. That's what I wrote down.

9 Q. Okay. "i.e., you need to get that place above 17-g a
10 day." Sir, that's a reference to him that "we're paying you
11 like a king and you need to be bringing in \$17,000 a day, day
12 in and day out on that clinic, right, sir?

13 A. My recollection is he had just had a raise and he
14 wanted another one on his base salary and that's why I
15 referred to his being paid like that because I felt that his
16 base salary was much higher than the person who had had the
17 role before him and I didn't feel any appreciation from him
18 for just getting a raise.

19 Q. You wanted for that big salary for him to bring home
20 17-g a day?

21 A. I think that was the budget of the clinic.

22 Q. What did you mean down here on Number 7, on your
23 instructions to Dr. DeBuck: "Follow the above advice and you
24 will be able to get your wife in the house she deserves."
25 What did you mean there?

1 A. The reason he was thinking about leaving the
2 corporation was that he wanted a different house that his
3 wife wanted.

4 Q. And your advice to him was if you get your clinic to
5 where it needs to be, we'll get you the big house, right?

6 A. That's what I put down.

7 Q. Am I right that -- you know that -- do you recall
8 being asked in your deposition about the salary that Dr.
9 DeBuck was making at that time?

10 A. Yes.

11 Q. And do you remember being asked where Dr. Khan, one of
12 the dentists in this case, was making more than Dr. DeBuck?

13 A. Yes, I do remember that.

14 Q. And you know that Dr. Khan was making more than Dr.
15 DeBuck?

16 A. He was a New York dentist, was he not?

17 Q. Yes, sir.

18 A. Yes, I do remember that and I think my reply to it was
19 he was in New York and this guy was in Albuquerque, New
20 Mexico, and the rates that doctors were paid was very much
21 based regionally on the ability to get the doctors.

22 Q. So Dr. DeBuck was making a high salary and Dr. Khan
23 was making an even higher salary?

24 A. I think my point was for Albuquerque, he was being
25 well compensated.

1 Q. Dr. Andrus, did you threaten and berate dentists that
2 did not meet FORBA's production expectations?

3 A. You know, I think that on e-mails I talked a bigger
4 game than I did if you talked to those dentists, personally.

5 Q. Well, let's look at some of your e-mails. I'm going
6 to hand you Exhibit 169, and ask you if you can identify
7 Plaintiff's Exhibit 169 as an e-mail from March of '07 to Al
8 Smith and others?

9 A. Yes.

10 Mr. LEYENDECKER: Offer Exhibit 169, your Honor.

11 THE COURT: Objections?

12 Mr. HULSLANDER: Is that the weekly report,
13 Kevin?

14 Mr. LEYENDECKER: Yes, sir. It's a March 10,
15 2007, regional report --

16 Mr. HULSLANDER: Objection, Judge, irrelevant.
17 Has nothing to do with Syracuse.

18 THE COURT: Exhibit 169 received.

19 (Whereupon, Plaintiff's Exhibit 169 was received
20 in evidence)

21 Q. Doctor, let me get you to focus on the base page
22 01836941, about six pages in, Alb-1, right there at the top.
23 Is that Albuquerque?

24 A. Yes, I believe so.

25 Q. You're saying this to Al Smith, the president, and

1 Lindley, the C.E.O, and you tell them: "Monday I'll walk in
2 here like Darth Vader and begin the conversation." That's
3 what you were going to do, walk in like Darth Vader?

4 A. That was a reference to -- I think the I.T. department
5 was down for a week. I had used Yahoo and I made some other
6 references, if you read these, they're very tongue-in-cheek,
7 as far as having a theme, because I found it boring to write
8 just "wrote reports," so I had a Star Wars theme going in
9 this one. So that's what I put down, is that I will walk in
10 here like Darth Vader.

11 Q. Let's flip to page 1836942. Couple pages in. Denver?

12 A. Yes.

13 Q. You told your superiors at New FORBA: "I lit these
14 clowns up on Friday."

15 A. I was talking about the front desk, yes.

16 Q. Do you think it's appropriate to go into a clinic and
17 light them up?

18 A. Well, I talked to them about the amount of scheduling
19 that was needed to be done and they weren't doing it; they
20 weren't making the requisite phone calls to get the schedules
21 full.

22 Q. Let me just ask you about this last sentence here:
23 "They are so negative for a place that got a big bonus last
24 month." If the only pressure that you ever applied at Old
25 FORBA or New FORBA was simply to work hard, then why are you

1 lighting people up right after they got a big bonus, because
2 they can't get a big bonus unless they work really hard,
3 right?

4 Mr. FIRST: Object to the form.

5 THE COURT: I'm going to sustain the objection.

6 Q. You sure those clowns at the front office are not the
7 dentists?

8 A. Pardon me?

9 Q. Are you sure the clowns you're referring to are the
10 front office and not the dentists?

11 A. I remember that one in particular, that the schedule
12 was quite light. I shouldn't have referred to them as
13 clowns. Like I said, these tend to be a communication
14 between me and people I know. If I knew it would be in a
15 forum like this, I would have written it differently.

16 Q. You mean you think the people you were writing to
17 didn't deserve or want you to speak in a respectful tone
18 about the dentists who were charged with the care of very
19 young children?

20 Mr. HULSLANDER: Objection, Judge. He said it
21 was with respect to the front office. Nothing to do with
22 the dentists.

23 THE COURT: Is that a form objection?

24 Mr. LEYENDECKER: Let me move on, your Honor.

25 Q. I'll hand you Exhibit 172 and ask if you can identify

1 Exhibit 172 as a September 10th, 2007 weekly report to your
2 bosses, Al Smith and Michael Lindley?

3 A. Yeah.

4 Mr. LEYENDECKER: Plaintiffs offer Exhibit 172.

5 Mr. HULSLANDER: Object, irrelevant to the
6 extent it doesn't involve Syracuse, Judge.

7 THE COURT: Exhibit 172 received.

8 (Whereupon, Plaintiff's Exhibit 172 was received
9 in evidence)

10 Q. Let me focus you in on Page 1550492.

11 A. Yes, sir.

12 Q. Under Reno. Now, Reno, that's the clinic that you
13 caught referring out patients, right?

14 A. Yes.

15 Q. You say: "Reno, I will be there on Tuesday. Queue
16 the theme from Jaws, dot dot dot dot dot dot dot?"

17 A. Yes.

18 Q. You were going to light them up, weren't you?

19 A. I was going to talk to them about their performance,
20 as far as getting work.

21 Q. Let me hand you Exhibit 170 and ask if you can
22 identify this as a January 19th, 2007 -- excuse me, Exhibit
23 170, ask if you can identify Exhibit 170 as a series of
24 e-mails that you wrote to a variety of doctors and clinics?

25 Mr. FIRST: Dates, please?

1 Mr. LEYENDECKER: They're reflected on your copy
2 of 170. There's a variety of them. Dennis, I think they
3 begin January 2007 and just a quick perusal here...

4 Q. Dr. Andrus, does Exhibit 170 contain a variety of
5 e-mails that you sent in 2007?

6 A. It does.

7 Mr. LEYENDECKER: Plaintiffs offer 170.

8 Mr. HULSLANDER: Objection, irrelevant, nothing
9 to do with Syracuse. And in addition, they're -- do you
10 want me to approach rather than speaking.

11 THE COURT: If you have a legal objection, and
12 if you have something more than a legal objection then,
13 yes, Mr. Hulslander, please approach.

14 Mr. HULSLANDER: I would like to approach then,
15 Judge.

16 (Discussion off the record at the bench)

17 BY MR. LEYENDECKER:

18 Q. Dr. Andrus, let me switch gears with you for a moment
19 and put in front of you -- well, before I do that, am I right
20 that you were the highest-paid employee at New FORBA?

21 A. I believe I was, yes.

22 Q. Higher than the chief executive officer?

23 A. Yes.

24 Q. Higher than the chief financial officer?

25 A. Yes.

1 Q. Higher than the chief operating officer?

2 A. I owned the clinics. I thought I was entitled to it.

3 Q. And am I -- so the highest paid at New FORBA. Let's
4 look at your compensation at Old FORBA. I'm going to hand
5 you what's in evidence as Exhibit Number 7. This is a copy
6 of the Asset Purchase Agreement, whereby the company was sold
7 from Old to New. And I'm going to orient you on the last
8 page that identifies the marketing employees and their
9 salaries, okay?

10 A. Okay.

11 Q. And am I right that you were an employee of DD
12 Marketing?

13 A. You know, I don't recall whether I was paid out of DD
14 Marketing or --

15 Q. Okay, you --

16 A. I remember being paid in Old FORBA by the clinics that
17 I owned.

18 Q. Okay. Let's look at Exhibit 7, because this is the
19 Asset Purchase Agreement, and over there on base 41214 is a
20 schedule that sets forth, "D.D.M. currently employs the
21 following employees," and so does that refresh your memory,
22 Dr. Andrus, that you were employed by D.D.M. at the time of
23 the sale?

24 A. I really don't have -- I don't have a recollection
25 that I was employed by them, and I can tell you about this

1 form a little bit, that this was put together while they were
2 putting together the deal, am I right? It was during that
3 time period, between April of '06 and September 26 of '06,
4 and Dan DeRose called me and asked me what number I wanted
5 put down there, and that's the number I told him.

6 Q. So let's say -- it identifies you as the central
7 regional dental director, and that's what you were for Old
8 FORBA?

9 A. Like I said, I think I took that role contractually
10 based on it becoming New FORBA, but that's what he put down.

11 Q. Okay. And it identifies your salary as \$1,080,000?

12 A. Yes.

13 Q. You graduated from dental school in 2000 and
14 five-some-odd years later you're making over a million
15 dollars?

16 Mr. HULSLANDER: Objection. Irrelevant, Judge.

17 A. I think I told him --

18 Mr. HULSLANDER: Objection. Irrelevant.

19 THE COURT: I'm going to sustain the objection.

20 Q. Were you making over a million dollars for old FORBA?

21 Mr. FIRST: Objection.

22 Mr. HULSLANDER: Objection, Judge.

23 THE COURT: Overruled.

24 A. I was not making that much with them.

25 Q. How much were you making?

1 A. I think it was very close to the salary that I signed
2 for with New FORBA, which was 700 to 740, somewhere in there.

3 Q. So am I right that New FORBA simply kept paying you
4 the same thing that Old FORBA had been paying you?

5 A. It was close, but there was a contractual role that
6 went forward, where that was not the case in the past.

7 Mr. LEYENDECKER: May I approach, your Honor?

8 THE COURT: Yes.

9 Mr. HULSLANDER: May we approach or --

10 Mr. LEYENDECKER: I'm sorry. May we approach?

11 I apologize. I meant may we approach? Thank you.

12 (Discussion off the record at the bench)

13 BY MR. LEYENDECKER:

14 Q. Dr. Andrus, may I see Exhibit 170, please? Thank you.

15 THE COURT: With respect to Exhibit 170, it's my
16 understanding that the Plaintiff has voluntarily removed
17 two pages, that there's still an objection to Exhibit 170.

18 Mr. HULSLANDER: As to relevance.

19 THE COURT: As to relevance. The Court is going
20 to receive Exhibit 170 as redacted. So overrule the
21 relevance objection. Okay.

22 Mr. LEYENDECKER: Just making an adjustment on
23 the pdf version of it.

24 THE COURT: Okay. I didn't know you can adjust
25 pdf versions.

1 Mr. LEYENDECKER: You can remove a page.

2 (Whereupon, Plaintiff's Exhibit Number 170 was
3 received in evidence)

4 Q. Dr. Andrus, while my colleague is working on that, let
5 me ask you about a few of these. These are your variety of
6 e-mails that you sent in 2007?

7 A. Yes.

8 Q. And the first one at 381880 Mr. Lindley asks you,
9 "What's going on at Topeka? The numbers have gotten much
10 better?" And you told him: "Fear of God and six-month
11 recall." And fear of God was a reference to your
12 interactions with that clinic, right?

13 A. It goes back to the fact that I put down "fear of God"
14 because that's a fear I have, so to let him know the
15 six-month recalls is what really made the difference. And
16 that's a reference to getting people back in and getting
17 their teeth cleaned on time and paying attention to that
18 metric.

19 Q. The next page, 617142 -- starting at the bottom, Dr.
20 Andrus, Lisa DeRose's e-mail to you regarding Dr. Kevin
21 Webster; do you see that?

22 A. Yes.

23 Q. "And the two Liz's came to me this morning. They are
24 concerned about Dr. Webster." Who are the Liz's? Are they
25 dental assistants?

1 A. I believe so. I know Liz Tran is a dental assistant.

2 Q. They say: "Dr. Webster did not diagnose an obvious
3 cavity that Dr. Kathleen easily can see, is just one
4 example," and also a reference to "he will not convert." And
5 that's a reference to a dentist not wanting to convert a
6 child?

7 A. If a patient canceled the next hour, he was content to
8 go with that cancellation and wasn't interested in finding
9 out if somebody in hygiene wanted to get work done.

10 Q. He didn't want to convert a child receiving hygiene
11 care to an operative patient; that's what that was in
12 reference to?

13 A. Or the doctor checking hygiene, he didn't want to do
14 those.

15 Q. These Liz's, they feel "he is going to hurt the
16 production." That's the context you received in the e-mail?

17 A. I don't know if the "they" is referring to Kathleen or
18 who it's referring to.

19 Q. Also "he will not convert," they feel -- let's see
20 what you say, Dr. Andrus. "I smoke him Friday. Looking
21 forward to it." Him is the doctor that will not convert --

22 A. Yeah, I think --

23 Q. May I finish, please, sir? Am I right that the him
24 you're going to smoke on Friday, that you're looking forward
25 to smoking on Friday, is the dentist who will not convert and

1 | who the assistants are worried about in production?

2 | A. The person I was going to talk to and the colorful
3 | language that I used in a communication with a friend is
4 | referring to missing the caries, not getting the diagnosis
5 | correct.

6 | Q. Let's look at 616351, the August 2nd, 2007 e-mail from
7 | you regarding the Sante Fe schedule?

8 | A. Yes.

9 | Q. And you received a report from Sharon Ludey (phon.)
10 | about the prior day's production, is that what that is?

11 | A. If the office managers would send in a production
12 | number, the conversion of the patient seen and the doctors
13 | working that day, they would send that e-mail.

14 | Q. After receiving information about Sante Fe's
15 | production, you wrote back and told them: "I'm going to
16 | destroy them," with an exclamation point, right?

17 | A. I just thought it was pretty low.

18 | Q. You wanted to destroy them, whoever "them" is?

19 | A. I should have used much better language to Lisa. Lisa
20 | is a good friend.

21 | Q. Who was "them," the doctors?

22 | A. I was going to talk to them and the office managers.

23 | Q. Let's look at the next one, 614616. This is another
24 | e-mail from Michael Lindley on March 5th, '07, "How is
25 | today?" That was a reference to how much production we did

1 today in the region?

2 A. I think it was, yes.

3 Q. And it says: We did \$256,560." Dr. Frank, one of the
4 doctors in your region. "Dr. Frank did -- sit down -- 37,
5 000 and change," right? You reported back: "All others
6 sucked" and you'd be up their ass. Is that right?

7 A. That's what I put down.

8 Q. And that's what you were going to do?

9 A. I was going to talk to them about it.

10 Q. Let's turn to the next one, 616427. This is an e-mail
11 from you to Liz Tran in Topeka. Was Liz a dentist or office
12 manager or who was Liz?

13 A. Liz really was a head assistant.

14 Q. You tell Liz that "the clowns in Topeka," and those
15 are doctors, right?

16 A. Yeah, it's a derogatory term I shouldn't have used,
17 and it's describing the clinic as a whole, all the people who
18 work there.

19 Q. So the whole clinic is a bunch of clowns?

20 A. Well, I shouldn't have used the term.

21 Q. "These clowns need a conversion board and a shot in
22 the arm." What's a conversion board?

23 A. A conversion board would be a board Liz came up with
24 where if there was a mother who wanted it done that day, you
25 would put down the name of the patient on that board, if she

1 walked in specifically at the front desk and asked for that.

2 Q. And you thought that those clinics were a bunch of
3 clowns and they needed a shot in the arm. Let's look at the
4 last --

5 A. Well, my job was to keep them working, and my language
6 was a little bit colorful around that.

7 Q. Let's look at 614744. This is another e-mail where
8 you're being provided information about daily production and
9 converts and patients seen; do you see that?

10 A. Yes.

11 Q. And your view is: "We need to fire her," after seeing
12 those production statistics. Who was the her?

13 A. I was talking about the office manager.

14 Q. Aso in your job as a regional president for New FORBA,
15 you wanted to fire the office manager --

16 A. I think it was Lisa DeRose oversaw those, and this
17 e-mail is to Lisa.

18 Q. And you --

19 A. Well, I think there had been problems in the past with
20 her that Lisa had talked to me about.

21 Q. Let me ask you, Dr. Andrus -- I'm sorry; I stepped on
22 your toes when you were answering, but am I right, as the
23 regional director, you wanted to fire the office manager when
24 you saw that the production was only 5,380?

25 A. I think it was more along the lines of it being an

1 e-mail that it was the last straw and me feeling she was just
2 not trying to do her job.

3 Q. Let's look at the last one, 616532. This is the June
4 5th, 2007 e-mail from you to Ashley Angaran-Swan. Do you see
5 that? Cases over \$500, references the number of cases the
6 clinic does on a given day that generate more than \$500 in
7 revenue, right?

8 A. The large cases, yes.

9 Q. The "we will need to visit with you again on how
10 little production we are getting per patient out of Reno" --

11 A. Right.

12 Q. -- you weren't happy they were not generating enough
13 revenue per patient in Reno?

14 A. The metric gives you an idea the closer they get to
15 the amount they pay for a cleaning, the less dentistry that's
16 being done overall, as far as restorative dentistry.

17 Q. Isn't the amount of dentistry that's needed up to the
18 treating dentist and not some regional manager who's going to
19 tell him "You're not doing enough" --

20 A. It is but --

21 Q. May I finish?

22 Mr. HULSLANDER: That's a statement. It's a
23 statement.

24 THE COURT: It was a question.

25 Q. Isn't the amount of dentistry up to the treating

1 dentist?

2 A. It is.

3 Q. And shouldn't the amount of dentistry to be done on
4 any particular child simply be a function of what that
5 treating dentist thinks the child needs?

6 A. Absolutely.

7 Q. Then what business do you have telling those dentists
8 that they need to generate more on average per child?

9 A. It was about work. It was a metric that gave you an
10 idea about how much was getting done by the clinic by the
11 doctor. The closer the number got to just a hygiene visit,
12 that's the basic thing that you can come in for. Do you see
13 what I'm saying?

14 Q. No. I do not. But those are all the questions that I
15 have.

16 THE COURT: Okay. We're going to take our
17 afternoon recess, fifteen minutes. Don't talk about the
18 case. Don't do any independent research.

19 (Whereupon, a recess was taken at 3:10 p.m.)

20

21 (Whereupon, the jury was then brought back into
22 the courtroom)

23 THE COURT: All right. Ready to proceed?

24 Mr. FIRST: I have no questions.

25 Mr. HULSLANDER: No questions, Judge.

1 Mr. STEVENS: No questions for me, your Honor.

2 THE COURT: Okay. You may step down.

3 (Whereupon, the witness was then excused)

4 Mr. FRANKEL: We call as our next witness, Dr.
5 Koury Bonds.

6

7 Dr. KOURY BONDS, having been called as a witness, being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION BY Mr. FRANKEL: ^ Index

10 Q. Good afternoon, Dr. Bonds.

11 A. Good afternoon.

12 Q. You might recall we spent a day together in
13 Washington, D.C., last November 19th?

14 A. Yes.

15 Q. Do you remember that?

16 A. Yes.

17 Q. That was when I took your deposition. A number of
18 lawyers were present. I asked you questions under oath in a
19 conference room; a court reporter took down the testimony.
20 Do you remember that?

21 A. Yes.

22 Q. This is a copy of the transcript of that deposition.
23 It's for your use. If you feel the need to look at it to
24 refresh your memory on something, you should do so. I may be
25 asking you questions and referencing it. If so, feel free to

1 review it, okay?

2 A. Thank you.

3 Q. I would like to start by seeing whether we have some
4 common ground on dental principles, okay? You are a dentist,
5 right?

6 A. Yes.

7 Q. You have been a dentist for seven years, licensed
8 dentist for roughly seven years?

9 A. Yes.

10 Q. And during that time, you worked at one of the Small
11 Smiles clinics?

12 A. Yes.

13 Q. Still work at one of the clinics?

14 A. Yes, I do.

15 Q. Okay. And for a period of time you worked here in
16 Syracuse; is that right?

17 A. Yes.

18 Q. You were one of the dentists who took care of Jeremy
19 Bohn, right?

20 A. Yes.

21 Q. You understand this case is a case brought by Jeremy's
22 mom on Jeremy's behalf relating to the treatment that he
23 received by you, by Dr. Khan, by Dr. Aman, and the
24 relationship between the three of you and these other
25 defendants; do you understand that?

1 A. Yes.

2 Q. Some questions about basic rules regarding dentistry,
3 okay? Is it the duty of a dentist to avoid exposing patients
4 to unnecessary risk?

5 A. Yes.

6 Q. Does a dentist need, when deciding what type of
7 treatment to provide, to choose the least risky option for
8 the patient?

9 A. I would say that the dentist should choose what is
10 medically necessary for the patient at that time.

11 Q. And in choosing between two options, is it the
12 dentist's duty to choose the least risky option?

13 A. I think it is the dentist's duty to perform what is
14 medically necessary for the patient at that time.

15 Q. I understand that, sir. My question is not about
16 that. My question is assuming that care is necessary, if you
17 have to choose between two options, do you choose the riskier
18 option or the least risky option?

19 A. If it's medically necessary, then you would choose the
20 least risky, yes.

21 Q. And is it a fact, sir, that dentists are not to allow
22 their judgment to be influenced by their employer 's desire
23 to make more money or maximize production; is that true?

24 A. Yes.

25 Q. You have to put your patients' interests ahead of your

1 employer's financial interests; that's your duty as a
2 dentist, correct?

3 A. Yes.

4 Q. And you need to put your patients' interests ahead of
5 your own personal financial interests; that's the duty of a
6 dentist, correct?

7 A. Yes.

8 Q. It's not proper to restrain kids to increase
9 production, is it?

10 A. No.

11 Q. Or to meet the company's production goals?

12 A. No.

13 Q. There's been a fair amount of talk -- I'm not sure how
14 much evidence -- on access to care, and that in certain
15 communities children on Medicaid have limited options as to
16 where they can go to get care. You've been in the courtroom
17 since the beginning, sir; you've heard that, right?

18 A. Yes.

19 Q. Whether the patient has many options or few options,
20 is it true that the child is entitled to the same standard of
21 care?

22 A. Yes.

23 Q. Now, you have no memory of Jeremy Bohn's specific
24 case, other than what's in his dental records; is that true?

25 A. Yes.

1 Q. You've seen many children -- some before Jeremy and a
2 lot after, and there's nothing about his case that -- you
3 don't have any specific recollection, right?

4 A. Not until it was brought to my attention in 2011.

5 Q. Okay. And you've had the opportunity to look at the
6 dental records, right?

7 A. Yes.

8 Q. You have no memory of any discussions with Jeremy or
9 his family or the staff of the clinic or for that matter any
10 other dentist about Jeremy's case, correct?

11 A. To the best of my knowledge, I don't think so, no.

12 Q. No independent recollection of the events related to
13 Jeremy's case; is that right?

14 A. Besides what was shown to me in the charts?

15 Q. Right.

16 A. No.

17 Q. And there's nothing that you can think of to do that
18 would allow you to refresh your memory, so talking to
19 somebody or reading something; you're limited to what's in
20 the chart. That's the basis of what you know about the case;
21 is that right?

22 A. Yes.

23 Q. You knew when you went to work for Small Smiles, for
24 FORBA, that you were required to maintain records for each of
25 your patients; is that right?

1 A. Yes.

2 Q. And that those records should accurately reflect your
3 evaluation and treatment of your patients, right?

4 A. Yes, they should.

5 Q. Including Jeremy?

6 A. Yes.

7 Q. Keeping accurate records is an essential part of
8 dental practice; is it not?

9 A. It is a part of dental practice, yes.

10 Q. It's an essential part, right?

11 A. It is a part of dental practice, yes.

12 Q. Is it an essential part or not?

13 A. I guess you could say that.

14 Q. You were taught a lot about maintaining complete and
15 accurate records when you were in dental school, right?

16 A. Yes.

17 Q. And the facts that allow you to evaluate a patient's
18 condition should be in the record; is that true?

19 A. Yes.

20 Q. Your practice is to try to write down all important
21 facts regarding the patient's condition in the chart, right?

22 A. Well, when it's actually written in the chart, it
23 could be me. It could also have been -- it could have been
24 an assistant or it could also have been a hygienist.

25 Q. Yes, sir, but if it was a fact that was important to

1 | you in your decision-making, you would write it down or
2 | instruct somebody else to write it down; isn't that true?

3 | A. Yes.

4 | Q. It should be in the chart if it was important to you;
5 | isn't that right?

6 | A. Yes.

7 | Q. And if a fact was important to your diagnosis, it
8 | certainly should be in the record, correct?

9 | A. Yes.

10 | Q. If there was a discussion that you had with a parent
11 | that was important, something about that discussion should be
12 | in the record, right?

13 | A. If it was deemed important, yes.

14 | Q. All right. And if a discussion was pertinent to
15 | treatment of a patient, that discussion should be documented,
16 | correct?

17 | A. Yes.

18 | Q. You reviewed the chart in preparation for your
19 | deposition, right?

20 | A. Yes.

21 | Q. And have you reviewed it again in preparation for your
22 | trial testimony?

23 | A. Yes.

24 | Q. At the time of your deposition, you did not know of
25 | anything of importance that had been left out of the chart,

1 right?

2 A. To the best of my knowledge, no.

3 Q. And do you know of anything of importance that now,
4 preparing for your trial testimony, that was left out of the
5 chart?

6 A. To the best of my knowledge, no.

7 Q. Not a single thing?

8 A. To the best of my knowledge, no.

9 Q. All right. Some questions now, sir, about behavior
10 guidance. Whether it's this form of a papoose board or that
11 form of a papoose board, would you agree with me, sir, that
12 the objective is to try to keep kids from having to be in one
13 of those boards?

14 Mr. STEVENS: Objection to a papoose board that
15 was never, ever used at a clinic in Syracuse, your Honor.

16 Mr. HULSLANDER: Join in that objection.

17 THE COURT: Okay. I'm going to sustain that
18 objection as to form.

19 Q. Is it true, Dr. Bonds, that as a dentist who takes
20 care of young children, one of your objectives ought to be
21 keeping kids out of papoose boards, if you can?

22 A. As a dentist, my job is to provide the proper
23 treatment for the child that presents before me at the time.

24 Q. Yes, sir, and part of that treatment has to do with
25 behavior guidance; is that right?

1 A. Yes.

2 Q. The goal of behavior guidance is to ease fear and
3 anxiety while promoting an understanding of good dental
4 health; is that true?

5 A. Yes.

6 Q. And behavior guidance is not just the dentist; it's
7 the dentist interacting with the child and with the parent;
8 is that true?

9 A. Yes.

10 Q. Should dentists use behavior guidance techniques that
11 are consistent with their level of professional education and
12 clinical experience?

13 A. Could you repeat that?

14 Q. Yes, sir. When you're as a dentist trying to decide
15 what type of behavior guidance you should use with a child,
16 should you limit yourself to those types of things where you
17 have a level of competence from either an education
18 standpoint or clinical experience?

19 A. Yes.

20 Q. And if the behavior guidance technique is outside the
21 scope of your skills, do you have a duty as a dentist to
22 refer the child to another dentist who has the skills?

23 A. Yes.

24 Q. Is it a fact, sir, that most dental disease is not
25 life-threatening?

1 A. Most dental disease... I can agree with that, yes.

2 Q. Have you ever had one of your patients die from any
3 type of dental disease?

4 A. Any of my patients?

5 Q. Yes, sir.

6 A. No.

7 Q. In most circumstances, is it true that dental
8 treatment, the type and timing of dental treatment, can be
9 deferred to a later time if there is a behavior issue with
10 the child?

11 A. That would depend on the situation that you're dealing
12 with at the time. If the child is in pain, if the child is
13 having abscesses, that you should address those things as
14 soon as possible. If it's something that is deemed outside
15 the scope of my training, then I would give a referral, but I
16 would also palliate, which means I would also give a
17 prescription for something to try to get the child out of
18 pain at that time.

19 Q. One of the things you just mentioned is as a dentist,
20 one of your objectives is to try to relieve pain, right?

21 A. Yes.

22 Q. So if a child comes in to your clinic in pain, whether
23 they're acting cooperatively or uncooperatively, you're
24 trying to deal with the pain; that's your number one concern,
25 right?

1 A. Yes.

2 Q. You certainly are not going -- as a dentist, you're
3 not supposed to inflict pain, are you?

4 A. No.

5 Q. Is it true that when you're deciding what type of
6 behavior guidance to use with a child, one of the things you
7 have to consider is how urgent the dental needs are of the
8 child?

9 A. Yes.

10 Q. And among the techniques of behavior guidance, are
11 there a variety of techniques?

12 A. Yes.

13 Q. Are you familiar with the difference between basic
14 behavior guidance techniques and advanced behavior guidance
15 techniques?

16 A. Yes.

17 Q. Tell us what -- give us some examples of what are the
18 basic behavior guidance techniques?

19 A. That would be considered tell-show-do, which is you
20 show the patient your instruments; you introduce them to the
21 chair; you try to have them sit in the chair. You would show
22 them what we call Mr. Thirsty, the suction; the air-water
23 syringe, my water gun; my tickle brush, which I would call
24 the high-speed; or Mr. Bumpy, as I call the slow-speed. And
25 these are things I show by example, by rubbing on the finger,

1 rotating it like I'm going to feel for the vibration and
2 those sort of things.

3 Q. That's one of the techniques that you use with a child
4 to try to relieve anxiety and calm them down before you do
5 dental treatment, right?

6 A. Yes.

7 Q. It's called a basic behavior technique, right?

8 A. Yes.

9 Q. And it takes time, right?

10 A. Yes.

11 Q. Some children it takes more time than others?

12 A. Some children are more receptive to it than others.

13 Q. Give some other examples of what you would call basic
14 behavior techniques.

15 A. Consoling the child during treatment; use of
16 distraction I've used a lot of times when working. I would
17 do the countdown, as I'm working; "we're going to count down
18 from 20." I guess these would be considered basic behavior.

19 Q. How about having a parent come and talk to a child and
20 see if the parent can calm down the child? Is that a basic
21 behavior guidance technique?

22 A. I guess you could say so, yes.

23 Q. And is it true, Dr. Bonds, that it's the duty of a
24 dentist to utilize those basic behavior techniques before
25 instituting anything more drastic, like a papoose board or

1 sedation or general anesthesia?

2 A. Could you repeat that again?

3 Q. Yes, sir. Is there a continuum where the duty of the
4 dentist in dealing with a child's -- a young child's behavior
5 is you start with the basic behavior techniques and try to
6 see whether those will work before you even consider doing
7 anything more drastic?

8 A. Yes.

9 Q. And if you utilize these basic behavior techniques,
10 and -- if you utilize them, they should be in the dental
11 chart, correct?

12 A. Not necessarily.

13 Q. You don't consider the behavior techniques that you
14 use to be important in how you're treating the child?

15 Mr. STEVENS: Objection. The ones that don't
16 work; is that the question?

17 THE COURT: Would you like the question read
18 back?

19 Mr. STEVENS: Yes, please.

20 THE COURT: Val, read back the question.

21 (Whereupon, the question was read back by the
22 court reporter)

23 THE COURT: Do you have an objection?

24 Mr. STEVENS: I -- I find the question
25 confusing, so I object.

1 THE COURT: Okay.

2 MR. FRANKEL: I'll rephrase it, if that would
3 make it easier.

4 THE COURT: Can you answer the question or did
5 you find it confusing?

6 THE WITNESS: It was very confusing.

7 THE COURT: Why don't you rephrase the question?

8 Mr. FRANKEL: Sure.

9 BY MR. FRANKEL:

10 Q. If you try the basic behavior guidance techniques and
11 they don't work, that should be documented in the dental
12 record, correct?

13 A. Not necessarily, no.

14 Q. Well, if we're looking at a dental record and we're
15 trying to determine whether you did what you said doctors --
16 dentists are supposed to do and you don't put it in there,
17 how would we know?

18 A. Well, the thing there -- there are certain things that
19 I would customarily do, practices that I normally did, that I
20 would speak with the child, as far as trying to get them
21 calm, trying to have them get into the chair. Many times the
22 parents can even get them into the chair. That's when we
23 would discuss different types of behavior management.

24 Q. Sir, I'm talking about a situation where you actually
25 tried to do the things that you say dentists are supposed to

1 do, these basic behavior management techniques. If you
2 actually tried to do it and it didn't work, you would want to
3 document in the record that that happened so that anyone
4 looking at the record would understand why you considered
5 using more drastic behavior guidance techniques, right?

6 A. Well, I would document the patient's behavior, yes.

7 Q. I'm not asking about the behavior. I'm asking about
8 your efforts as the dentist to try to treat the behavior.
9 Are you saying you wouldn't put that in the chart, "Tried
10 this technique and it didn't work"?

11 A. Oh, no, I wouldn't write that in the chart, no.

12 Q. Pardon?

13 A. I would not write that in the chart.

14 Q. No. So for any of us years after a case, or for any
15 dentist who is looking at a chart years afterwards, they
16 wouldn't be able to tell whether you did or didn't utilize
17 these basic behavior management techniques, would they?

18 A. Well, in my experience, I don't know many dentists
19 that would put those types of things into their note, so I
20 guess...

21 Q. Do you remember the question?

22 A. Ask the question again, please.

23 Q. Pardon?

24 A. What was the question again?

25 Q. Would you read it?

1 (Whereupon, the question was read back by the
2 court reporter)

3 Mr. STEVENS: Objection. Calls for conclusion.

4 THE COURT: Well, overruled.

5 A. I guess the answer would be no.

6 Q. Well -- and it's not -- my question was years later,
7 but when you were at Small Smiles; Jeremy was seeing
8 different dentists each time he came there, correct?

9 A. Yes.

10 Q. And the dentists -- the second dentist who saw him,
11 Dr. Aman, would have to look at your chart, Jeremy's chart
12 with your notes on it, to see how you had managed him,
13 correct?

14 A. Yes.

15 Q. And he would expect other dentists to rely on that
16 chart, to know what techniques had you used or not used so he
17 could treat him, correct?

18 A. Well, he would be able to tell that from the chart
19 from what I wrote as far as his behavior, what techniques I
20 actually used to perform the treatment at that time.

21 Q. Okay. And on the behavior side, behavior guidance
22 side, would he be able to tell what techniques you tried to
23 use?

24 A. No, the chart would show what technique I did use.

25 Q. If you did use a technique, it would be in the chart,

1 right?

2 A. If it was -- yes.

3 Q. A few questions now about the basics of local
4 anesthesia, all right? Is local anesthesia aimed at
5 rendering an area numb?

6 A. Yes.

7 Q. Is the object of local anesthesia to allow you to work
8 on a patient without causing the patient pain?

9 A. Yes.

10 Q. And before you actually give the local anesthesia, do
11 you typically give something called topical anesthetic?

12 A. I typically wipe the gum with a piece of gauze,
13 two-by-two gauze, and then I would place the topical, which I
14 would allow to stay for approximately two minutes.

15 Q. It takes how long to do the topical, a couple minutes?

16 A. Approximately two minutes.

17 Q. And the purpose of the topical is what?

18 A. To reduces the amount of -- the pinch, when you're
19 trying to place the actual anesthesia with the syringe.

20 Q. Does it work most of the time?

21 A. Yes.

22 Q. Is controlling pain one of the most important aspects
23 of child behavioral guidance?

24 A. Yes.

25 Q. Should a reasonably prudent dentist try to avoid

1 inflicting pain on his or her patients?

2 A. Yes.

3 Q. And local anesthesia is the way you control pain when
4 you're doing dental procedures; is that true?

5 A. Yes.

6 Q. Particularly on children, right?

7 A. Yes.

8 Q. Dental procedures can be carried out more effectively
9 if a child is comfortable and free of pain, is that true?

10 A. Yes.

11 Q. Is it true, sir, that local anesthesia is the safest,
12 most effective drug available in medicine for the prevention
13 and management of pain?

14 A. I'm not sure I'm qualified to answer that question,
15 but I will say yes.

16 Q. As far as you know?

17 A. As far as I know, yes.

18 Q. You can't think of a medicine that is safer and more
19 effective in preventing pain than a local anesthetic, can
20 you?

21 A. No.

22 Q. And it takes around five, six, seven, sometimes as
23 much as 15 minutes for a local anesthetic to work; is that
24 right?

25 A. Well, that varies from the size of the patient, the

1 way the patient -- the area that we're actually placing the
2 anesthesia.

3 Q. Okay. Let's just talk about, say, a typical filling
4 for a child. Is it fair to say if you're going to give a
5 local anesthetic, you have to give the topical first, right?

6 A. That's what I normally do, yes.

7 Q. And then you give the local and the whole thing
8 together for an average child with a filling, what does it
9 take, five to ten minutes for it to work?

10 A. Seven to ten minutes by my math, on average.

11 Q. Seven to ten minutes or so? Okay. You have to give
12 the local and then do you have to wait a few minutes to see
13 if the area is numb?

14 A. Yes.

15 Q. And if it's not, you've got to wait longer, right?

16 A. Either wait longer or, depending on the weight or the
17 size of the patient, you can also add more.

18 Q. Okay. But then you have to wait for that to work,
19 right?

20 A. Yes.

21 Q. A reasonably prudent dentist waits for the local to
22 take effect before you begin drilling and filling teeth,
23 true?

24 A. Yes.

25 Q. You wouldn't give a local and then immediately start

1 working on the tooth, would you?

2 A. No.

3 Q. And why not?

4 A. Because, as I said before, it takes approximately two,
5 two minutes for the topical to work; it takes around six to
6 seven minutes for the anesthesia to normally set in,
7 depending on the size and weight of the patient.

8 Q. Okay. And so giving a local and then starting
9 immediately would not be good dental practice, right?

10 A. It is something I wouldn't do.

11 Q. Well, no, but I'm just asking you in general, it's not
12 something you would tell anybody else to do either, would
13 you?

14 A. No.

15 Q. Because you would be doing dental procedures on a kid
16 that you knew was not numb, right?

17 A. Well, you would test to see if the patient was numb
18 before you actually started doing any work in the first
19 place. You would use what we call the hook or explorer to
20 test the gingiva around the teeth to see if there's any
21 response. In the case of a child, many times you would test
22 the area that you are numbing because sometimes everything
23 hurts, so you would test that side and then the opposite side
24 to see if there's any reaction, any change of eye movement,
25 any movement of the head or anything to indicate there is

1 pain. After you test the area and it's numb -- once you've
2 tested everything, then you should proceed from there.

3 Q. Okay. You've got to have assurance that the child is
4 not going to be in pain before you start drilling and filling
5 on the teeth, right?

6 A. Yes.

7 Q. By the way, in New York, does the clinic who provides
8 dental care to children, do they get reimbursed for local
9 anesthesia?

10 A. I do not know.

11 Q. You don't know that it's included as part of the
12 reimbursement rate for, say, a filling?

13 A. I do not know.

14 Q. In Washington, D.C. -- that's where you practice; is
15 that true?

16 A. Yes.

17 Q. In Washington, D.C., do you get reimbursement for
18 local anesthesia?

19 A. I do not know.

20 Q. Bottom line on that, Dr. Bonds, is local anesthesia
21 takes time and if the facts are that you don't get
22 reimbursed, there's no financial benefit, right?

23 A. Say that again.

24 Q. Local an --

25 Mr. McPHILLIAMY: Object to the form of the

1 question.

2 THE COURT: He's rephrasing anyway, so...

3 Q. Local anesthesia, giving local anesthesia to a child
4 takes time, right?

5 A. Yes.

6 Q. We've established somewhere seven to ten minutes for a
7 filling, counting the topical?

8 A. Yes.

9 Q. And while that's happening, that seven to ten minutes,
10 is seven to ten minutes you're not working on somebody else's
11 case, right?

12 A. No, that's maybe the time we're doing tell-show-do.
13 I'm trying to make sure that the child is comfortable,
14 preparing for the treatment at the time.

15 Q. Okay. And the time that it takes is not reimbursable,
16 is it?

17 A. I honestly don't know. I don't think so.

18 Q. Some -- a few questions about working with children
19 and their psychological analysis and behavior. You don't
20 have any training, do you, in diagnosing a child's behavior?

21 A. I'm not a psychologist, no.

22 Q. I know you're not a psychologist, and you don't have
23 any particular expertise where you have learned as a dentist
24 how to diagnose kids' behavior. That's not your expertise,
25 is it?

1 A. Well, we were taught the difference between the
2 anxious patient, the hysterical patient, the off-standing
3 patient and those types of things. As far as psychological
4 diagnosis, I couldn't do that, no.

5 Q. These papoose boards, before you went to Small Smiles,
6 is it true, sir, that you had used a papoose board on a child
7 twice in your life?

8 A. Yes, I used once --

9 Q. Excuse me. Let me just ask you -- my question is, is
10 it true you've used it twice in your life? Is that true?

11 Mr. STEVENS: Objection. Counsel continues to
12 point to the board that has nothing to do with the
13 Syracuse clinic.

14 THE COURT: Well, I -- I don't think the
15 question -- the record is not going to reflect that --

16 Mr. STEVENS: That's why I stood up, your Honor.

17 THE COURT: All right. So you have a question?

18 Q. My question, I don't know that I got an answer. Is it
19 true, sir, that before you went to Small Smiles, you had had
20 a grand total of two incidents where you put a kid for dental
21 treatment in a papoose board?

22 A. One was a child --

23 Q. Excuse me. I'm just asking whether -- I'm going to
24 ask you about it in a second but I want to know whether I've
25 got the number right. Is it two --

1 A. I'm trying to answer because you're saying two
2 children and that's not the case. That's what I'm trying to
3 answer.

4 Q. It's more than two?

5 A. One was a child and one I assisted in my emergency
6 rotation in anesthesia in Harlem Hospital.

7 Q. That was not a dental case, is what you're saying?

8 A. That was not a dental.

9 Q. So one time before you came to Small Smiles you had
10 used a papoose board, right?

11 A. Yes.

12 Q. And that was an emergency situation, correct?

13 A. Yes.

14 Q. In an emergency room at a hospital, right?

15 A. Yes.

16 Q. Before you came to Small Smiles, you had never
17 restrained a kid in a non-emergency situation, had you?

18 Mr. STEVENS: Objection to using the word
19 "restrained."

20 THE COURT: All right. So again, just to
21 reiterate the ground rules here, only legal objections in
22 front of the jury, so it's to the form of the question.

23 Mr. STEVENS: Thank you, your Honor.

24 THE COURT: Overruled.

25 A. What was the question again?

1 Q. Before you went to work for Small Smiles, you had
2 never in your life restrained a child in a non-emergency
3 situation, had you?

4 A. No, I had not restrained any children, no.

5 Q. Dr. Bonds, is it appropriate -- well, let's talk about
6 the circumstances in which it's appropriate to restrain a
7 child, in your opinion, okay? Did you say in your deposition
8 that it was appropriate to put a child in a restraint if the
9 child comes to the clinic with severe tooth decay, is in a
10 great deal of pain, and where the lack of treatment may
11 endanger the child?

12 Mr. McPHILLIAMY: Objection to form.

13 Mr. STEVENS: Objection.

14 THE COURT: Sustained as to form.

15 Q. Dr. Bonds, is it your opinion that to restrain a child
16 you would need to establish that the child was in -- well,
17 this child was in a great deal of pain, had severe tooth
18 decay and where the lack of treatment would endanger the
19 child?

20 Mr. STEVENS: Objection to form.

21 THE COURT: Overruled.

22 A. I think I said I'd use protective stabilization in
23 cases where -- yes, in an emergent situation, and also in a
24 situation where treatment was deemed necessary, and it was a
25 situation where the child did have multiple caries, yes.

1 Q. Well, whether it's protective stabilization or
2 whatever term you'd like to use, putting a child in a papoose
3 board, why don't we talk about it that way, so we're all
4 talking about the same thing, okay? Before you put a child
5 in a papoose board, you need to establish that the child has
6 severe tooth decay, that they are in a great deal of pain and
7 that the lack of treatment may endanger the child's health;
8 is that true?

9 A. The use of the stabilization for -- yes, for emergency
10 situations. In the case of Jeremy, he had two teeth with
11 abscesses that definitely needed to be addressed. Also the
12 behavior was something that he was deemed uncooperative and
13 if we have given every other option, including referral, yet
14 the parent still wants the treatment done, these are the
15 options they are given: We could attempt the nitrous oxide;
16 We could attempt the protective stabilization. Otherwise, we
17 would give a referral.

18 Q. My question is not about that. My question is when
19 you do give -- when you do use a papoose board and before
20 you're going to consider using a papoose board, a child has
21 to be in a great deal of pain, has to have severe tooth
22 decay, and a lack of treatment that you're anticipating using
23 will endanger the child's health, correct?

24 A. I think that's what I was saying, is that yes, if the
25 child is in a situation where he's having emergent pain; he's

1 an emergency situation, if the child's behavior makes it
2 necessary to use in order to perform treatment safely for the
3 child at that time and also, as I said, if a referral was
4 given or option of referral was given and the parent still
5 wanted treatment done at that time, then these were the
6 options that were given and this is what we would do in order
7 to take care of the tooth.

8 Q. The child has to be in severe pain, a great deal of
9 pain, before you are going to use a papoose board; is that
10 true?

11 Mr. STEVENS: Objection.

12 THE COURT: Overruled.

13 A. As I said, if the child is having -- coming in,
14 they're young, they have emergency pain, abscesses, some type
15 of pain, they're upset, don't want to be there, I would say
16 yes, it is indeed necessary to use it at times, if after
17 giving all the other options to the parent that they still
18 wanted treatment done, this is the fashion we'll let you know
19 we're doing it and then yes?

20 THE COURT: Doctor, I'm going to ask you to
21 listen to the question being asked and if you can answer
22 the question with a yes or no because I think the question
23 could have been answered with a yes or no answer. If you
24 can't answer it with a yes or no, then just tell the
25 lawyer you can't answer it with a yes or no.

1 THE WITNESS: Sorry.

2 Q. Before you consider putting a child in a papoose
3 board, a child has to be in a great deal of pain, correct?

4 Mr. STEVENS: Objection to the gesture that the
5 attorney is making as he asks that question, pointing to a
6 thing which is not used at the Syracuse clinic.

7 THE COURT: Overruled.

8 A. I can't answer that with a yes or no answer.

9 Q. Okay. You're unable to tell us whether a child needs
10 to be in pain before you consider putting him in a restraint?

11 A. I can't answer that with a yes or no answer.

12 Q. When I asked you in your deposition whether you agreed
13 with the Small Smiles statement that a child may be put in a
14 papoose board if the child comes to the clinic with severe
15 tooth decay, is in a great deal of pain and where the lack of
16 treatment may endanger the child, you told me you agreed with
17 that. Is that still --

18 Mr. STEVENS: Objection.

19 Mr. McPHILLIAMY: Objection.

20 Q. Is that still your opinion?

21 THE COURT: Before you answer -- I'm going to
22 sustain the objection as to form.

23 Q. Have you changed your opinions, Dr. Bonds, since last
24 November, as to the circumstances in which it's appropriate
25 to restrain a child?

1 A. I don't think so.

2 Q. All right. Would you look at your deposition? It's
3 right there in front of you. Page 188, okay? Are you with
4 me? Line 7, I asked you: "All right. Now, FORBA says in
5 some situations where a child arrives at a dental center with
6 severe tooth decay, in a great deal of pain or where a lack
7 of treatment may endanger a child, children may be placed in
8 a protective stabilization device. Do you see that"? And
9 you answered: "Yes, that's what it says here." And then
10 there's a bunch of objections and things, and then I asked
11 you on Page 190, "Do you restrain children at the FORBA
12 clinics on some basis other than the one described on the
13 FORBA web site?" And you said --

14 Mr. STEVENS: Objection to not reading his
15 answer on Page 189, your Honor. May we approach?

16 THE COURT: Yes.

17 (Discussion off the record at the bench)

18 Q. Dr. Bonds, do you believe that there are any
19 circumstances, other than those that FORBA has described
20 publicly, as when it's appropriate to restrain a child during
21 treatment?

22 Mr. FIRST: Objection.

23 THE COURT: Legal basis?

24 Mr. FIRST: Could I approach? I'm sorry to do
25 that, your Honor.

1 (Discussion off the record at the bench)

2 BY Mr. FRANKEL:

3 Q. Dr. Bonds, do you agree that the only time that it's
4 appropriate to put a child in a papoose board is if the child
5 comes to the clinic with severe tooth decay, is in a great
6 deal of pain, and where the lack of treatment may endanger
7 the child?

8 Mr. STEVENS: Objection, asked and answered.

9 THE COURT: Overruled.

10 A. I guess it would depend on the situation at hand, and
11 if it was a situation where yes, the child was having
12 emergent pain, if they were in a situation where they had
13 rapid caries and were not getting treatment elsewhere, then I
14 would guess I would have to say yes.

15 Q. Before you restrain a child, you said you have to use
16 these basic behavior management techniques like tell-show-do,
17 right?

18 A. I don't restrain children, sir. I use the
19 immobilization.

20 Q. I'm using that as a verb. I'm not trying to analogize
21 it to something if there's some problem with that, but before
22 you put a child in a papoose board -- let's do it that way.
23 Before you put a child in a papoose board, the dentist should
24 first try these basic behavior management techniques like
25 tell-show-two, right?

1 A. Yes, before stabilization or before immobilizing the
2 patient or stabilizing the patient, yes, you should try to
3 talk to the child; you should try to use tell-show-do, should
4 try to get the child in the chair on his own.

5 Q. Okay. And that's -- the papoose board is the last
6 resort, correct?

7 A. In the office, yes.

8 Q. Why is that? Why do you try to avoid putting a child
9 in a papoose board?

10 A. Well, you would want the child to actually want to
11 have the work done. You would want the parent to be
12 comfortable with the treatment that you're providing.
13 However, if there's an option that the patient could go
14 somewhere else, as far as a referral, yes, you give them that
15 option. You don't just automatically put a child on a
16 stabilization board. You give them other options.

17 Q. You do everything you can to avoid it. It's a last
18 resort?

19 A. You give every patient options. You try to give them
20 options and coax them into the proper decision for them as
21 the parent of the child.

22 Q. And as a dentist, your advice is the papoose board is
23 the last resort. It's the least desirable thing of all the
24 behavior guidance techniques, correct?

25 Mr. STEVENS: Objection.

1 A. Say it again, please?

2 Q. As a dentist, it's your advice to a parent that you
3 use the papoose board as the last option, not the first
4 option, right?

5 A. Yes.

6 THE COURT: It's 4 o'clock. I think we're going
7 to break now. If counsellors would just stay in the
8 courtroom for a few minutes. Have a good night. Don't
9 talk about the case with anybody. Don't do any research.
10 See everybody tomorrow morning at 9 o'clock.

11 (Whereupon, the jury was then excused from the
12 courtroom.)

13 (Whereupon, the proceedings were adjourned at
14 4:00 p.m.)

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CERTIFICATE

I, VALERIE WAITE, an Official Court Reporter
in and for the State of New York, Fifth Judicial District,
do hereby certify that I recorded stenographically the
foregoing proceedings, at the time and place noted in the
heading hereof, and that it is a true and correct
transcript of the proceedings therein to the best of my
ability.

Valerie Waite,
Senior Court Reporter

Dated: September 25, 2013

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