SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA: CIVIL PART

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

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

Plaintiffs,

vs.

FORBA HOLDINGS, LLC, FORBA, LLC n/k/a
LICSAC, LLC; DD MARKETING, INC.;
SMALL SMILES DENTISTRY, PLLC.
...
Including: NAVEED AMAN, DDS; KOURY
BONDS, DDS; YAQOOB KHAN, DDS,

Defendants.

Jury Trial

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September 26, 2013

Onondaga County Courthouse
401 Montgomery Street
Syracuse, New York 13202

Before:

HONORABLE DEBORAH KARALUNAS
Supreme Court Justice

And a Jury

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* * *

WITNESSES:

* * *

(September 26, 2013, Judge Karalunas)

THE COURT: Good morning. Ready to proceed?

Mr. FRANKEL: We are, your Honor.

Mr. McPHILLIAMY: Your Honor, may I approach?

THE COURT: Yes.

Mr. McPHILLIAMY: Your Honor, on behalf of the defendants, we have an objection to the curative charge that you gave to the jury yesterday on the record following our lunch break. We are not asking for a different curative charge because no instruction will alleviate the prejudicial effect of allowing any evidence regarding the governmental investigation and the allegations in the New FORBA and Old FORBA litigation.

THE COURT: Can I interrupt you for a second? Is this going to be long?

Mr. McPHILLIAMY: No.

THE COURT: All right.

Mr. FRANKEL: We're objecting because the curative charge is insufficient to alleviate the trial error and insufficient to neutralize the effect of that error. The only recourse for this error is to grant defendant's motion for the mistrial.

Thank you.

Mr. STEVENS: I join in that.

Mr. FIRST: I join in that as well.

THE COURT: Motion denied.

Now are we ready?

Mr. FRANKEL: We are, your Honor.

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

THE COURT: Good morning again.

A JUROR: Good morning.

THE COURT: Are you ready to proceed?

Mr. FRANKEL: We are, your Honor.

Dr. KOURY BONDS, having previously been called as a witness, being previously duly sworn, continued to testify as follows:

CONTINUED DIRECT EXAMINATION BY Mr. FRANKEL:

Q. Good morning, Dr. Bonds.

A. Good morning.

Q. Some questions about your background, sir. You are not a pediatric dentist by training, are you?

A. No.

Q. You're what's called a general dentist?

A. Yes.

Q. You never attempted to go do a pediatric dental residency program, did you?

A. No.

Q. Would it be misleading to hold yourself out as a pediatric dentist?

A. Yes.

Q. But you have worked at a Small Smiles clinic from the time you got your dental license until today; is that true?

A. Yes.

Q. And while you were in New York, you only treated children; is that true?

A. Yes.

Q. And since you left New York, but still worked for Small Smiles, you still only treat children; is that true?

A. No.

Q. Okay. How long has it been since you last treated a child?

A. I got here Sunday, so the Friday prior to that.

Q. Okay. So the majority of the work you do is treating children, correct?

A. At this time, no.

Q. Okay. Are you licensed to practice dentistry in New York?

A. At this time, no, I'm not.

Q. You went to dental school in Washington, D.C.; is that true?

A. Yes.

Q. Started school in 1993?

A. Yes.

Q. In dental school, you got behind on what you call your clinicals; is that true?

A. Yes.

Q. And dental school is normally a four-year curriculum, correct?

A. Yes.

Q. But for you, it took six years to get through dental school; is that right?

A. Yes.

Q. You finished in 1999, right?

A. I finished my academics in actually '97, and we had to -- I finished my clinicals, yes, in 1999.

Q. So that's when you graduated from dental school; is that true?

A. Actually, my graduation, when I actually walked across the stage, was actually 1997.

Q. But your diploma was 1999; is that right?

A. Yes.

Q. And to get a dental license in New York, you have to pass a national examination; is that true?

A. Yes.

Q. And for you, finishing dental school in 1999, it was not until 2006 that you passed the examination; is that right?

A. Yes, that I passed Part 2.
Q. You first took the examination while you were in dental school in 1997; is that right?
A. Yes.
Q. And you failed the test, right?
A. Yes.
Q. Then you took the test a second time, in Westchester County, after you'd finished dental school, right?
A. Yes, after I finished dental school, yes.
Q. And you failed the test that time, right?
A. Yes.
Q. Then you took the test a third time, once you were working for Small Smiles as a dental assistant; do you remember that?
A. Yes.
Q. That was in the fall of 2005, correct?
A. Yes.
Q. And you failed the test a third time, right?
A. Yes.
Q. And then in the -- in the winter of 2006, you took the test a fourth time, and this time you passed, right?
A. Yes.
Q. And you got your dental license shortly after that, around March of 2006, right?
A. Yes.

Q. And within a few weeks, you were treating Jeremy Bohn, right?

A. Yes.

Q. Now, some questions about how you got to Small Smiles. By the way, do you use FORBA or Small Smiles when you're talking about the clinics?

A. I say Small Smiles.

Q. That's the name on the door, on the sign?

A. Yes.

Q. When you interviewed for a job at Small Smiles, were you unemployed?

A. Yes.

Q. How long had you been unemployed, sir?

A. I can't really recall.

Q. Well, was it a matter of weeks or months or years?

A. I would say years.

Q. Years? Okay. And you applied for a job as a dental assistant; is that true?

A. Yes.

Q. In New York, does a dental assistant have to have any degree or training?

A. Yes, they do.

Q. Is there a certification for dental assistants in New York?

A. I'm not quite understanding the question.

Q. Well, some -- hygienists, for example, you understand that you have to go to school and get a degree and take a test to be a licensed hygienist in New York?

A. Yes.

Q. That's not true for dental assistants; is it?

A. No.

Q. So you interviewed -- even though you had been through dental school, you interviewed -- because you didn't have a license, you interviewed for a job as a hygienist -- as a dental assistant, right?

A. Yes, as a dental assistant.

Q. And Small Smiles hired you as a dental assistant, right?

A. Yes.

Q. That was in May of 2005?

A. Yes.

Q. So about a year before you treated Jeremy Bohn, right?

A. Approximately, yes.

Q. Okay. And as a dental assistant, your salary was about $1,800 a month; is that correct?

A. Yes.

Q. When you signed on as a dental assistant for FORBA, the expectation was that you would eventually pass your test and they would want to hire you as a dentist; is that true?

A. Yes.

Q. In fact, FORBA agreed to pay for a review course so that you could go get some extra help to study for the test; they agreed to pay for that, right?

A. Yes, the Kaplan Course, yes.

Q. The Kaplan Course. And you in exchange agreed that for the $700 they were going to pay for the test, you would go to work for Small Smiles for two years if you passed the test, right?

A. Yes.

Q. And you also agreed that if you broke that promise and went to work for somebody else, you'd have to pay them back $10,000, even though they only spent $700, on the review course, right?

A. Yes.

Q. So it sounds like they wanted you and you wanted them; is that right?

Mr. McPHILLIAMY: Objection.

THE COURT: Sustained.

Q. The agreement that they had to pay $1,800 a month as a dental assistant also said that if you signed on and got your license, your salary would go up to $10,000 a month instead of $1,800 a month, right?

A. Yes, I believe that was the salary for associate dentist at the time.

Q. Okay. And you did eventually pass the licensing test

and began working as a dentist for FORBA in 2006, right?

A. Yes.

Q. And immediately your salary went from $1,800 a month to $10,000 a month, right?

A. Yes.

Q. And within two years, Dr. Bonds, your salary went up to $206,000, correct?

A. Yes.

Q. You were made the lead dentist in charge in Rochester; is that true?

Mr. STEVENS: Objection to when he's talking about. He's talking about two years later.

THE COURT: Overruled.

A. I was co-lead in Rochester, New York, yes.

Q. So within two years of getting your dental license, your salary had gone from $1,800 a month or $22,000 a year, to $200,000 a year, and you had gone from a dental assistant to lead dentist or co-lead dentist at one of the clinics, right?

A. Would you say that again?

Q. Yes, sir. You had gone from a job that you were working in in 2006 as a dental assistant for $1,800 a month; in two years you were co-lead dentist making over $200,000 a year, right?

A. 2005... I would say it was over three years.

Q. Okay. Well, in 2007, were you up to $200,000 a month (sic)?

A. Excuse me?

Q. Let me ask you to look at your deposition. When did you become a lead dentist in Syracuse, Dr. Bonds?

A. Are you asking for the deposition?

Q. No, I'm just asking if you remember when you became a co-lead dentist? Was it 2007/2008?

A. Approximately 2007, yes.

Q. So whether it was two years or three years, you had gone from a job where you were a dental assistant making $1,800 a month to a job where you were the co-lead dentist making over $200,000 a year, right?

A. Yes.

Q. And that was with this company FORBA. That's who you started with and that's who you were up to $200,000 a year with, right?

A. With Small Smiles, yes.

Q. And in 2008, did someone from FORBA ask if you would agree to be the designated owner of the Syracuse and Rochester clinics?

A. Yes.

Q. You weren't going to make any investment, actual-- your money being put into the clinics, were you?

A. No.

Q. And you weren't going to get any of the profits of the clinic, were you?

A. No.

Q. No, those went to FORBA; you understood that, right?

Mr. FIRST: What date are we talking about?

Mr. FRANKEL: I'm talking about when he became the owner, in 2008.

Mr. FIRST: In 2008?

Mr. FRANKEL: Yes.

A. Well, I -- is there a designation between New and Old or how does that work?

Q. Sir, let me see if I can -- if you don't understand my question, let me try to rephrase it. In 2008, someone from New FORBA came to you and said, "Dr. Bonds, we've got a problem. Dr. Andrus," who was listed as the owner, "he can't be the owner anymore. He doesn't work for us anymore. We need a new owner. Would you be our designated owner?" Right?

A. Yes.

Q. And you said -- and they said to you, "I'll tell you what: We will pay you $3,000 a month for you to be our designated owner, $1,500 for Rochester; $1,500 for Syracuse, right?

A. I'm not sure of the exact number, but yes.

Q. And you signed some papers and they started paying you

money for your name to be listed as the owner of the clinics, right?

A. Yes.

Q. Then in 2010, you moved back to Washington, D.C., right?

Mr. McPHILLIAMY: Objection, relevance.

THE COURT: Sustained.

Q. Dr. Bonds -- you transferred on behalf of FORBA from the offices in Syracuse to Washington, D.C., right?

Mr. STEVENS: Objection, relevance.

THE COURT: It is, but I'll allow it.

A. I requested to return to Washington, D.C.

Q. When that happened, you couldn't be this designated owner anymore, so somebody else had to be the designated owner, right?

Mr. McPHILLIAMY: Objection, relevance.

THE COURT: Sustained.

Q. Have you been with Small Smiles ever since, in D.C.?

A. Yes.

Q. And has the company treated and compensated you well since the time you started to work for them?

Mr. STEVENS: Objection, relevance.

THE COURT: Overruled.

A. I would say I'm paid what the associate's at that time salary was, yes.

Q. Do you feel like you have been treated and compensated well?

A. Yes.

Q. All right, Doctor. Let's talk specifically about your treatment of Jeremy Bohn, okay? In May of 2006, you had had your dental license a few weeks, right?

A. Yes.

Q. And Jeremy Bohn -- and you were working here at the Syracuse FORBA clinic, right?

A. Yes.

Q. Jeremy came to the clinic and was sent to hygiene, like any new patient would be who comes to the clinic, right?

A. Yes.

Q. And you knew it was his first time at Small Smiles, right?

A. I can't say that I was actually sure of that at the time.

Q. Well, you had access to his chart, right?

A. Yes.

Q. And if he had been seen before at Small Smiles, you'd see that in the chart?

A. Yes.

Q. And in fact, this was his first time; you know that now for sure, right?

A. Yes.

Q. First thing that happened is he was taken off to the hygiene area to have his teeth cleaned and to be evaluated; is that true?

A. Yes.

Q. And at the Syracuse clinic, you have a hygiene area in one part of the clinic, and that's a big room where all the kids were in the same room, right?

A. Yes.

Q. And then you have operative rooms in a different part of the clinic where if the kid needs particular treatment, you take him to that room, whether it's to fill a tooth or pull a tooth or do more extensive things; is that true?

A. Yes, we had operatories for dental treatment.

Q. And those are usually one child in the room at a time, correct?

A. Yes.

Q. You also had something called quiet rooms; is that true?

A. Yes.

Q. If a child was anxious and making noise and crying, you often would take them into a quiet room for his or her hygiene so as not to scare or disrupt the other children who were in this big hygiene area, right?

A. Yes.

Q. Is that yes?

A. Yes.

Q. Okay. You decided, Doctor -- well, you decided, Dr. Bonds, that Jeremy should be taken into one of these quiet rooms to have his teeth cleaned and examined because he was so distressed you didn't want the other children to be upset by his screaming; is that right?

A. I wouldn't use those words. I would say he was uncooperative, yes.

Q. Okay. He was uncooperative, and so you took him to the quiet room, correct?

A. Yes.

Q. And you then decided that what you needed to do was put Jeremy in a papoose board while the people working there cleaned his teeth, took X-rays, and you could examine him; is that right?

A. Yes, due to his behavior, yes.

Q. All right. Before you recommended that he be put in a papoose board, were all alternative behavior techniques used on Jeremy?

A. Yes.

Q. Dr. Bonds, I'll show you what's been marked as Exhibit Number 199. Does this look like a copy of Jeremy Bohn's chart, his dental chart from Small Smiles?

A. Yes.

Q. Would you point out for the ladies and gentlemen --

you're familiar with the chart, right?

A. Somewhat, yes.

Q. Well, you're familiar with it just generally in having worked at the Small Smiles clinics for years, true?

A. Yes.

Q. And I'm sure you've taken the time to review the chart in connection with this case, haven't you?

A. Yes.

Q. So would you please point out for the ladies and gentlemen of the jury where in the chart it shows -- it says anything about you or anyone on behalf of Small Smiles utilizing any less invasive techniques than a papoose board when Jeremy was restrained in the hygiene room on May 23rd, 2006.

Mr. STEVENS: Objection to form and the word "invasive."

THE COURT: Okay. Overruled. You can answer.

A. It isn't written in the chart.

Q. There's no evidence in the chart at all that anybody tried tell-show-do or any other type of technique that you talked about yesterday that's supposed to be done before putting a child in a papoose board, right?

A. No, it's not written in the chart.

Q. There's no evidence that there was -- that Jeremy's mother was brought in to talk to him or anything else to try

to calm him down, correct?

A. It's not written in the chart.

Q. All right. And you told us yesterday that if it was anything important, it should be in the chart, correct?

A. Yes.

Q. Okay. So you decide that this child needs to be put in a papoose board while you clean his teeth and take X-rays and examine him. Before you could actually do that, you had to talk to his parents, didn't you?

A. Yes.

Q. And his parents were out in the front; they weren't back with Jeremy, with you and Jeremy, were they?

A. I cannot recall at this time.

Q. Okay. You don't remember the details of that, correct?

A. I don't remember whether the parent was in the room or not at that time.

Q. Is there anything in the chart that says that the parent was in the room?

A. No.

Q. When you recommend to a parent that their child needs to be put in a papoose board, you have to offer alternatives, such as nitrous oxide or referral to a pediatric specialist; is that true?

A. That and also the option of not treating at all. We

can reschedule.

Q. You, as a reasonably prudent dentist, need to tell the parents, "Here's your choice: We can try nitrous oxide. We can defer the treatment; we can send you to a pediatric -- refer you to a pediatric dentist, or we can put your kid in a papoose board." That's the obligation of a dentist, right?

A. Yes.

Q. And can you tell us whether there is any evidence in the record that you offered Jeremy's mom, Ms. Varano, those options?

A. No, it's not in the chart, but that's what I normally do.

Q. There's nothing in the chart that suggests you offered any options to Miss Varano, other than put her kid in a papoose board, right?

A. It's not what's written in the chart, but that is what I normally do.

Q. You have no recollection of what you did, right?

A. It's what I normally do.

Q. That's not my question. Do you have any recollection of what you did?

A. No.

Q. And you didn't write down that you did it, right?

A. No, it's not --

Q. What would be very important -- that's important, to

describe alternatives to the parents, if you in fact did it, right?

A. Yes.

Q. All right. So you then presented Miss Varano with a written consent form to -- which is required in order to get permission to put a kid in a papoose board, true?

A. Yes.

Q. And you know that the form itself that was presented said that there were no known risks of restraining or putting a child in a papoose board, right?

A. Yes, that's what's written here.

Q. You're looking at --

Mr. FRANKEL: Your Honor, at this time we would move to introduce Exhibit 199.

THE COURT: Any objection?

Mr. STEVENS: No objection.

Mr. McPHILLIAMY: No objection.

Mr. FIRST: No objection.

THE COURT: Exhibit 199 received.

(Whereupon, Plaintiff's Exhibit Number 199 was received in evidence)

Q. Doctor Bonds, feel free to review the chart, as you have, in response to my questions. I'll probably ask you to do it, but in the event that it would help you to answer questions, like it did there, feel free to do so.

A. Thank you.

Q. As far at the consent form, the consent form said there were no known risks of protective stabilization; is that right? It says: "I understand there are no known risks to the immobilization procedure," right?

A. Yes.

Q. And you had Miss Varano sign that, right?

A. Yes, after speaking with her, yes.

Q. And you signed it, too?

A. Yes.

Q. The form here is one that the company gave to you, right, or to the clinic? I shouldn't say to you; to the clinic?

A. Yes, it's a form we used at the clinic, yes.

Q. And it's a form that was used, as far as you know it, at many -- at all the Small Smiles clinics, right?

Mr. STEVENS: Objection.

THE COURT: Legal basis?

Mr. STEVENS: Speculation.

THE COURT: Well, we don't know. He can answer.

Go ahead.

A. I know this is the form we used at Syracuse.

Q. Okay. You used it in Syracuse and you worked at some other Small Smiles clinics in New York and Rochester and for a little while in Newburgh; isn't that true?

A. Yes.
Q. And you used the same forms there, didn't you?
A. I believe so.
Q. All right. A written consent form like this is supposed to reflect what the dentist told the parent in order to get the consent form signed, right?
A. Yes.
Q. I mean, the whole purpose -- it's not just some nebulous form. The whole purpose of the written consent is to verify what's been said orally, correct?
A. What I say on conversation with the patient --
Q. Excuse me, Dr. Bonds; that's not my question. My question is what is the purpose of the written consent form, to have a document in your file so that there's no dispute as to what the healthcare provider told the patient?
Mr. STEVENS: Your Honor, may the witness finish his answer?
THE COURT: Well, I do think the answer appeared like it was going to be nonresponsive, so I don't think it was improper to interject there.
Val, would you please read back the last question, this last question that was asked.
(Whereupon, the question was read back)
A. No.
Q. Okay. Is there anything in Jeremy Bohn's chart that

says that you told Ms. Varano something different than what you told her in writing and signed on May 23rd, 2006?

Mr. STEVENS: Objection.

THE COURT: The basis?

Mr. STEVENS: Form. He said that was told and it's written.

THE COURT: Overruled.

A. What was the question again?

Q. Is there anything in Jeremy's chart that suggests that you told Ms. Varano something different than you told her in writing and signed on May 23rd, 2006?

A. No, there's nothing written.

Q. The only evidence we have in the chart as to what was said and what disclosures were made for the consent is the consent form itself that you and she signed?

A. Yes.

Q. So after you got Ms. Varano to sign the consent form, you then went back to the quiet room where Jeremy was and began your -- well, let me ask you this: Do you actually clean the teeth?

A. At times, yes, but generally, no.

Q. Okay. So you go back in the quiet room, put him in the papoose board; somebody else probably cleaned his teeth; is that right?

A. Yes, the hygienist.

Q. All right. And then there were X-rays taken, right?
A. Yes.
Q. While he was in the papoose?
A. I can't recall that.
Q. All right. And then you did an examination of him in the papoose; is that right?
A. I did an examination, yes.
Q. When you put a child in a papoose board, are you supposed to continuously monitor their vital signs?
A. Yes.
Q. You need to do that in order to avoid catastrophes; is that true?
A. Yes.
Q. Like heart rate racing so high that the child has a heart attack or a stroke, right?
A. Yes.
Q. When you restrained -- put Jeremy in a papoose board in the quiet room, did you monitor his vital signs, Dr. Bonds?
A. I can't recall, but it's what I normally would do.
Q. Would you please point out to us where in Jeremy's chart we can look to see what his vital signs were when he was being put -- he was being held in this papoose board for his teeth to be cleaned?
A. It's not written in the chart.

Q. No, sir. And there are specific places in the chart for monitoring vital signs, right?

A. Yes.

Q. Particularly when -- there's a special place for monitoring when a child is in a papoose, right?

A. Yes, I think it's on the operative sheet.

Q. Right. I mean, it -- as an ordinary matter, you don't during dentistry, you don't monitor children's vital signs, normally, when you're doing most dental procedures, correct?

A. No.

Q. No, that's incorrect or no, you don't normally -- you don't normally monitor them?

A. No, I -- for a child that is cooperative, that's something I normally don't do, other than continue monitoring from what I visually see.

Q. Okay. But as far as actually keeping track with a continuous monitor, it's only when they're put in a papoose device that it's important to actually monitor minute by minute, correct?

A. Yes.

Q. And there's no evidence that anyone did that with Jeremy Bohn when he was in restraints in the hygiene area on May 23rd, 2006, correct?

A. It is not written in the chart.

Q. Do we know how long he was in the papoose in the

hygiene area?

A. It's not written in the chart.

Q. But we know it was long enough to do a cleaning, X-rays and an examination, correct?

A. It was long enough for an examination and for a cleaning.

Q. And you did take X-rays, right?

A. I can't recall if he was in the papoose or stabilization for his X-rays.

Q. And then after you did your examination, you were supposed to evaluate what his existing condition was, correct?

A. Yes.

Q. And there's a place in the chart for that, correct?

A. Yes.

Q. This is out of Plaintiff's Exhibit 199. There's a section in every one of the charts to indicate what the patient's existing conditions were before you treat him, correct?

A. Yes.

Q. And this diagram shows teeth. The first -- the top part here -- I'm pointing to the top -- are the adult teeth; is that true? The first section?

A. The numbers 1 through 16?

Q. Yes, sir.

A. Yes.

Q. And then below that, there are the teeth that are the baby teeth; is that right?

A. Yes.

Q. And baby teeth ordinarily are coded by the alphabet. Each tooth is given a letter; is that right?

A. Yes.

Q. And in all, how many teeth are in a typical child's mouth when all their teeth are in it?

A. 20.

Q. 20 teeth, okay. This is Jeremy Bohn's chart, dated May 23rd, 2006, and under existing conditions, what are Jeremy Bohn's existing conditions, Dr. Bonds?

A. They were not written in the correct place.

Q. No one actually evaluated them, did they?

A. Yes, we did evaluate them.

Q. You did? You remember?

A. Yes.

Q. I thought you didn't remember this case?

A. I'm sorry?

Q. I thought you didn't remember anything specific about this case?

A. Well, this is what I would normally do.

Q. Okay. What you would normally do is when you figured out what the existing conditions were, you would fill this

chart in to show what they were, right?

A. Yes, it should have been filled in properly.

Q. If you did it, if you actually did evaluate his existing conditions. But if you didn't, there would be nothing to fill in, right?

A. It's not filled in properly.

Q. Do you have anything in the record -- since it's blank, is it fair to say there's nothing here to say what his existing conditions were?

A. Say that again, please.

Q. Since the chart that you were responsible for was blank on what his existing conditions were, is it fair to say you didn't assess his existing conditions?

A. No, it's not.

Q. All right. We have no way of knowing here in 2013 what you saw or say you saw because you didn't fill it out, correct?

A. I would say this is improperly filled out.

Q. Yes, sir, and as a result we have no way of knowing whether you did an evaluation of his existing conditions or not, do we?

A. Yes, there are other portions of this form that it does show that we did an evaluation.

Q. The form is in multiple parts. Chuck, can you pull it in? The diagram, the chart has the section we're talking

about it and then below it are another group of diagrams with the same teeth, and that's the section of the chart that you're supposed to use to show the work you do, the work that's scheduled to be done and then when you do it, the work that's done, right?

A. Yes.

Q. But the first part of the chart is the part that is the evaluation, correct?

A. Yes. That is the intended portion.

Q. And that part is blank?

A. Yes, it was improperly filled out.

Q. Okay. Dr. Bonds, in order to do treatment, you need to take X-rays of the teeth and look at the teeth; is that true?

A. Yes.

Q. And in Jeremy's case, you took X-rays of five of his teeth; is that right?

A. Yes.

Q. And of the five that were taken, only two are even legible; is that right?

A. I'm not -- I don't understand what you mean by "legible."

Q. A bad term. That's probably a bad way of describing an X-ray, but you couldn't make -- do dentists use the terms sometimes diagnostic and nondiagnostic?

A. Yes.

Q. And a nondiagnostic X-ray is one that is taken and while you can actually see the image, you can't make much out of it? It's not something you can make a diagnosis from?

A. If it's nondiagnostic, no, you cannot.

Q. And of the five teeth that were x-rayed, three of the five were nondiagnostic, right?

Mr. STEVENS: Your Honor, the originals are available for the witness.

Q. You can look at the X-rays, if you'd like. Do you want to look at the X-rays, Dr. Bonds? Would that help you? Or would you like me to point you to your deposition testimony?

A. Can I see the X-rays?

Q. Okay.

Mr. STEVENS: Can we mark the original chart while we're doing this, your Honor?

THE COURT: Is Exhibit 199 the original chart?

Mr. FRANKEL: 199 is a copy. 200 is the original chart --

THE COURT: Which contains the X-rays?

Mr. FRANKEL: Yes, ma'am. They're... I have no objection to marking -- I move to introduce Exhibit 200 into evidence.

Mr. STEVENS: No objection.

THE COURT: Any objection from anybody else?

Mr. McPHILLIAMY: No objection.

Mr. FIRST: No objection.

THE COURT: All right. Exhibit 200 received.

(Whereupon, Plaintiff's Exhibit 200 was received in evidence)

A. Normally, we have a view box. I apologize.

Q. We just happen to have one of those, Dr. Bonds. Would you like one? Would it help you?

A. One of these X-rays would be considered by definition nondiagnostic because it was cone-cut.

Q. The bottom line, Dr. Bonds, is that of the X-rays that were taken of Jeremy on May 23rd, 2006, you only got a good look at two teeth; is that true?

A. Yes, that and with visual and tactile means we would make a diagnosis.

Q. We can start with the X-rays. As far as the X-rays are concerned, you had a good look at two teeth but not any of the others, right?

A. Yes.

Q. And did you try to retake the X-rays to try to get better X-rays?

A. That's what we normally would do.

Q. Is there anything in the record that suggests you did here?

A. No, nothing is written here.

Q. How about photographs? Sometimes -- is it true that sometimes dentists, if they're having a hard time with X-rays, can at least get a photograph of the mouth. It's not as good as an X-ray but at least gives you some visual evidence of what the child's mouth looks like. Did you take any photographs?

A. No, I did not take any photographs.

Q. Did anybody else?

A. As far as I can recall, no.

Q. So there's no visual evidence that we have of what Jeremy's teeth looked like except for those two teeth that you can see on the X-Ray, right?

A. Yes.

Q. And besides the X-rays, you said that you usually conduct some tests you described as visual and tactile tests; is that right?

A. Examination, the mirror, the explorer, the air/water syringe to blow air on things. We also use those for diagnosis.

Q. Okay. And when you don't have X-rays, then you need to be very specific in what you're viewing and feeling so that there's a clear record as to why you're doing what you're doing, right?

A. Yes.

Q. Is there anything in Jeremy Bohn's chart that shows the results of what you say are these tactile and visual tests?

A. Yes, the treatment plan.

Q. The treatment plan. No, I'm not asking about what you wanted to do. I'm asking about what did you actually say you observed and felt when you did your examination?

A. No, it's not written there.

Q. Nothing?

A. We wrote that the teeth were not restorable.

Q. So with X-rays on two teeth, you decided that what Jeremy needed was work on eleven teeth; is that true?

A. No. That decision came after using radiographs, after using the explorer, the mirror, and having a look at the remaining teeth through my visual and tactile means.

Q. Right, and what the record shows is that the X-rays were of two of the eleven teeth and that there's no indication as to what your tactile and visual tests showed, correct?

A. Say that again?

Q. From the dental chart, when we're trying to evaluate what information did Dr. Bonds have when he recommended that Jeremy needed work on eleven teeth, what we have is X-rays on two teeth and no information about what the visual and tactile tests showed, right?

A. That's not what's written in the chart.

Q. What we do know is that Jeremy was not in pain when he came to Small Smiles, was he, sir?

Mr. STEVENS: Objection.

THE COURT: The legal basis?

Mr. STEVENS: Speculation.

THE COURT: Overruled.

A. We did not. It's not written in the chart that he came in with pain.

Q. If a child is in pain, you said yesterday that's the number one thing that a dentist tries to relieve. If a child comes in in pain, you need to deal with that right away, right?

A. Yes.

Q. So if he was in pain, you would expect that to be in the chart, right?

A. Yes, it should have been written in the chart.

Q. Okay. And it's not in the chart. Is it reasonable to believe he was not in pain?

A. No, because why else was he there, other than the pain?

Q. You cleaned his teeth, Dr. Bonds. He was there because somebody told him he needed to come there; you understand that, right? Told his mom he needed to come to Small Smiles?

A. I'm not sure what anyone told Ms. Varano.

Q. Is there anything in the record that suggests on the date he came to Small Smiles on May 23rd he had any swelling in his mouth, face?

A. Well, the fact that it was written on the medical history by Ms. Varano that he had abscesses on teeth numbers I and B.

Q. My question, sir, was -- by the way, do you know Ms. Varano's handwriting?

A. I'm not a handwriting expert, no.

Q. I didn't think you were. Dr. Bonds, what evidence was there in the record that Jeremy had any swelling, any problems eating, any sensitivity to hot and cold or any classic symptoms the day he came to Small Smiles on the 23rd?

A. Well, first off, the medical history is filled out by the parent or guardian, and as I said, it was written that he was already on penicillin and had abscess on teeth numbers I and B.

Q. All right. He was on penicillin, right? That's what it says?

A. Yes.

Q. And the penicillin was working, right? If it wasn't, you would have put in the record there was swelling, there was fever, there was some symptoms when you saw him; wouldn't you?

A. Yes, it should have been written, yes.

Q. Well, tell me, Dr. Bonds, what was the chief complaint that brought -- that Jeremy had when he came to the Small Smiles clinic on the 23rd?

A. In the chart, there's just a check.

Q. A check. This wasn't any emergency, was it, Dr. Bonds? Chief complaint, check. Was it an emergency?

A. By this, I cannot tell.

Q. And, you know, you've been in the courtroom. There was a lot of talk by Dr. Mueller about early childhood caries. Did you diagnose Jeremy Bohn with early childhood caries?

A. I did not write that in the chart.

Q. There were 40 pages in the chart and there's no diagnosis by any of the dentists who treated him of early childhood caries, is there?

A. There's nothing written in the chart for early childhood caries.

Q. And there's a specific place for the diagnosis, right, right there? Right there on the hygiene report?

A. Yes.

Q. And the diagnosis is check, right?

A. That's what's written there, yes.

Q. Is it reasonable for a prudent dentist to not even diagnose the condition of a patient before they recommend

eleven teeth be worked on?

A. Ask the question again.

Q. Is it reasonable for a dentist to recommend to a parent that eleven teeth be worked on when they didn't even make a diagnosis of the condition?

A. There's nothing written there at that point. However, through the odontogram, through speaking with the parent and letting them know this is what we visually saw.

Mr. FIRST: I didn't hear that.

A. Through --

Mr. FIRST: Can I have it read back there?

THE COURT: Yes.

(Whereupon, the answer was read back)

Q. There's nothing in the chart -- we established there's nothing in the chart that shows that you wrote down what you visually saw; is there, Dr. Bonds?

A. That's what was on the odontogram, the lower portion.

Q. The odontogram shows what you were supposed to get ready to do, the work that you were going to do and then the work that was done. That's the point of the bottom part of the diagram; we established that, right?

A. Yes, but we couldn't come to that without making a diagnosis or looking at the child.

Q. Okay. So you recommend to Ms. Varano that Jeremy needs eleven teeth worked on, right?

A. Yes.

Q. You come back out from the hygiene area into the front where she is -- I'm sorry, you don't remember that; is that true? You don't remember where she was?

A. I can't recall if she was in the room or in the waiting room.

Q. The right thing for you to have done, the clinic to have done, would be to let her be with her child; is that true?

A. If she chose to be with her child, she could have been with her child.

Q. It would have been outrageous for a clinic or for a dentist to tell Ms. Varano, "Your child needs to be put in a papoose board; we're going to do work on him, and you can't come back and be with your three-year-old." That would be --

Mr. McPHILLIAMY: Objection --

Q. -- outrageous?

THE COURT: Overruled.

A. That's something I wouldn't normally do so no, it's something that shouldn't be done.

Q. No, it shouldn't. It shouldn't. Jeremy is then moved from the hygiene quiet room to the operative room; is that true?

A. Yes. We had him moved to an operatory after removing him from stabilization and walking him to the operatory.

THE COURT: You have to speak up.

A. Yes, he was moved to an operatory after being removed from the stabilization and moved to an operatory room, yes.

Q. Dr. Bonds, are you saying -- are you saying that Jeremy was in a papoose board in one room, took him out of that, moved him to another room and then had to put a papoose back on him?

A. Yes, because it's not -- that's something that I wouldn't transport a patient on stabilization. It's nothing that I would do.

THE COURT: You're going to have to keep your voice up.

THE WITNESS: I'm sorry.

Q. The second time on May 23rd that he was put in one of these quote -- on one of these boards, did you monitor his vital signs that time? You see the place right there on your management...

A. It was not written, no.

Q. There's a place for vital signs to be monitored, right?

A. Yes.

Q. That would be blood pressure, heart rate, respiration and oxygen saturation level, right?

A. Yes.

Q. And those are supposed to be monitored when you start

and -- at least when you start and when you end, right?

A. Before treatment and after treatment.

Q. Yes, sir. And that's to avoid these catastrophes, right?

A. Yes.

Q. And the way you monitor vital signs with a child in a papoose board is that you use something called a pulse oximeter; is that right?

A. Yes.

Q. Which is a little device that you put on a child's finger or toe that is able to detect these vital signs; is that right?

A. Yes.

Q. And here, no one did that, did they?

A. That's what is written.

Q. They did keep track of how long he was on the board, right? There's a place for that, right, when you start and when you stop?

A. Yes.

Q. And in this case, Jeremy was -- the second time he was restrained that day, it was for 20 minutes; is that right, from 11 to 11:20?

A. He was in the immobilization from 11 to 11:20, yes.

Q. And his behavior indication, he was very, very upset, correct?

A. Yes, he was deemed definitely negative at the beginning.

Q. And he was just as upset after being in the papoose board for the second time for twenty minutes, right? Didn't have a calming effect on him, did it?

A. No, his behavior response did change from what we wrote as a one to a two.

Q. A one to a two. He was definitely -- he went from definitely negative to negative; is that right?

A. By what's written there, yes.

Q. Okay. At that point, you pulled two of Jeremy's teeth, right?

A. After giving anesthesia, yes.

Q. Why did you give anesthesia, Dr. Bonds?

A. Because the teeth needed to be extracted. That's a procedure you definitely use anesthesia for.

Q. It's pain management, right?

A. Yes.

Q. Lidocaine, 2 percent, right?

A. Yes.

Q. And extraction means pulling the tooth, right?

A. Extraction means removing the tooth, yes.

Q. Removing. So you put him on the board, pull out two of his teeth, and then you send him back to his mom in the front of the office, right?

A. We completed the treatment and yes, we make sure that the patient is okay and cleaned up. Normally, there's a visit to the toybox or sticker -- whatever they wanted at the time and then yes, you are returned to the parent if the parent is not right there.

Q. And you're off to the next patient, right?

A. Depending on how busy the day was.

Q. Now, did Jeremy -- did you give information to Jeremy's mom as to when he needed to come back?

A. I don't -- I didn't do any scheduling, no.

Q. All right. Scheduling is done by other people in the office?

A. Yes, the front desk, the front office.

Q. Did you tell them there was any urgency to getting Jeremy back to do his other nine teeth that you had scheduled him to do?

A. That's not what is written, no.

THE COURT: You're going to have to --

THE WITNESS: I'm sorry.

Q. The plan was for Jeremy to return on September the 8th, 2006, about three months later, for some follow-up treatment, right?

A. Yes, that's what's written there.

Q. And if you had thought that Jeremy needed some urgent treatment, because of some raging infection that he had, some

infectious disease, you wouldn't have waited three months to have him come back, would you?

Mr. STEVENS: Objection.

THE COURT: Overruled.

A. If there had been another incident of something that we discovered a new abscess where he hadn't been palliated or given a prescription for pain or antibiotics then, yes, I would have made an arrangement for him to come back sooner.

Q. That's not my question, Dr. Bonds. As of the time that Jeremy left the Small Smiles clinic on May 23rd, you had nine more teeth to work on, didn't you?

A. Yes.

Q. And you didn't think you needed to get to those for at least three more months; it wasn't anything that was urgent, right?

A. I did not do any of the scheduling.

Q. I know you didn't do the scheduling, but you were looking after Jeremy's interests, weren't you?

A. Yes.

Q. He was your patient at that point, right?

A. Yes.

Q. And if you had thought he needed more urgent care, for fear that everything was going to get worse and needed to be treated or if it didn't, a lot of bad things could happen to

him, you wouldn't have allowed him to wait three months for his next visit, would you?

A. If it was something that I deemed that he needed to come back sooner, yes, I would have had him scheduled sooner, yes.

Q. And you did not?

A. That's -- no.

Q. Okay. Let's take a look, Dr. Bonds, at your recommendation for the -- for all the work that needed to be done. This is the treatment plan authorization form, right, Dr. Bonds?

A. Yes.

Q. This was the recommendation for treatment that you made to Jeremy's mom as to what you thought needed to be done on his teeth based on those two X-rays?

Mr. STEVENS: Objection.

THE COURT: Overruled.

Q. Right?

A. Based on my evaluation of the teeth visually, by evaluating the teeth with the explorer, yes, and with the X-ray.

Q. And so on the left side you have all the teeth lined up, one, two, three... eleven teeth, right, out of twenty?

A. Yes.

Q. Right? And on the right side you have what you were

recommending the treatment be, correct?

A. Yes, that was the recommended treatment at that time.

Q. And you told Ms. Varano -- you told Ms. Varano that "the treatments identified on this plan are, in my opinion, necessary to restore your mouth to a good level of health." Do you see that?

A. Yes.

Q. Was that your opinion?

A. Yes.

Q. I'm going to ask you one or two things about this treatment plan, Dr. Bonds. Do you see tooth E, where it says "E, MF, and then filling/nsp question mark," do you see that?

A. Yes.

Q. And the same thing down on the next two lines, filling/nsp, nsp question mark?

A. Yes.

Q. When you presented this treatment plan to Ms. Varano, you actually -- she signed it right down at the bottom, right?

A. Yes.

Q. So you actually showed her this sheet of paper and she signed it. You told her this is what needed to be done and she agreed, right? She agreed to do what you had recommended?

Mr. STEVENS: Objection.

THE COURT: Overruled.

A. I don't know if it's agreement, but this is what I saw and this was the things that I thought were important to restore his mouth to health.

Q. Okay. And when you presented this treatment plan to her, did the treatment plan have those notations "nsp question mark"? Is that your handwriting?

A. Well, actually, none of it is my handwriting, except for my signature.

Q. Okay. Who filled this out?

A. It could have been an assistant; it could have been a hygienist; I'm not sure.

Q. They took your word for it, though, and they put down what you told them to put down, correct?

A. Yes.

Q. And do you remember that when you presented this treatment plan to Ms. Varano, you were recommending that teeth E, F and G have fillings? Do you remember that?

A. That's what is written, yes.

Q. And somebody else afterwards came back in on the chart and wrote in nsp question mark, correct?

A. Yes.

Q. After Ms. Varano had signed the document?

A. I can't say when that was done, but that's --

Q. If someone from the Small Smiles dental clinic needs

to make a correction on the chart, add something to the chart, they're supposed to put a date by that to show when they made that change, correct?

A. Yes.

Q. And initial it so that everyone can tell that a change has been made and who made it, right?

A. Yes.

Q. Because if you look at this record and you see this is Dr. Bonds' treatment plan, you would believe that Dr. Bonds thought that E, F and G might need an nsp, correct?

A. Yes.

Q. But you didn't? That wasn't your view. Somebody else added that?

A. At the time of me doing the examination, I felt like they needed fillings, yes.

Q. Okay. Can you explain to me -- who had access to these charts?

A. Um... associates, the hygienists, the front desk staff and assistants.

Q. If somebody was going to do more work than you recommended, more extensive work, and they wanted to make it look like you agreed that even more work than you had asked for should be done, then wouldn't a clever thing to do would be to put on the record to make it look like you thought it should be done?

Mr. STEVENS: Objection.

THE COURT: Overruled.

A. I don't know about that.

Q. Have you ever written on charts of somebody else after they wrote them and had the patient sign them?

A. Not that I can recall.

Q. Now, Dr. Bonds, you say you pulled these teeth because Jeremy had an abscess, or two abscesses; is that right?

A. Yes, and that they were nonrestorable.

Q. Well, the teeth were nonrestorable. That's not an abscess, is it?

A. No.

Q. No, it's not. You did not diagnose Jeremy with an abscess, did you?

A. I diagnosed him as nonrestorable.

Q. Right, and that's not an abscess. That just means a tooth needs to come out, but there's not an ongoing infection or anything that endangers him, is there?

A. By my diagnosis, by them being -- it was nonrestorative and also going along with the medical history provided, the information provided in the medical history.

Q. He did not have any need, any emergent need because of some ongoing infection, did he?

A. Well, if he was coming in on an antibiotic and it was written in the medical history that there already was an

abscess then yes, he did have an infection, but it wasn't addressed, yes.

Q. If it was Ms. Varano who wrote in the chart that he had an abscess, she's not a dentist, right? Right?

A. Right.

Q. Other dentists had questions -- another dentist he had been to who sent him to you guys had a question as to whether he might have an abscess. You knew that, didn't you?

A. At that time, I'm not sure.

Q. You didn't talk to the dentist who had referred him to Small Smiles?

A. Not that I can recall.

Q. All right. But it was up to you to decide whether he had an abscess or not, right?

A. Yes.

Q. All right. And so... there's a place in the operative report for your diagnosis, right? See where it says diagnosis, 2BI?

A. Yes.

Q. And on the right side of the form there are diagnosis codes. A little higher, please. Up... so you have the diagnosis codes right there and one of the diagnosis codes is abscess, right?

A. Yes.

Q. And one of the diagnosis codes is nonrestorable,

right?

A. Yes.

Q. One is pain/discomfort, one is infected, and there are a number of other diagnoses. You did not diagnose him with an abscess, did you?

A. I'm sorry?

Q. You didn't diagnose him with an abscess?

A. I diagnosed him as nonrestorable.

Q. Yes, sir. And you didn't diagnose him as in pain or discomfort or infected, did you?

A. No, I diagnosed him as nonrestorable.

Q. All right, sir. There were other places where you were supposed to evaluate whether Jeremy had an abscess, other places in the chart, weren't there? For example, is there a part of the chart that shows radiographic findings? That first page, Chuck, where we got that diagram. See that part of the chart, Dr. Bonds? Did you fill that out or have someone fill it out?

A. Yes.

Q. And there's a section there for radiographic findings. These are the two teeth that you could see. By the way, could you see the two teeth that you pulled on the X-rays?

A. I could see one of the teeth, yes.

Q. One of the two teeth you could see?

A. Yes.

Q. And according to your radiographic findings, there was some caries or a cavity on that tooth, but no abscess, right?

A. With the radiographic findings, we have to say exactly what we see on the X-ray, and --

Q. Yes, sir, and there was no abscess that you could see on the X-ray, was there?

A. I saw caries, yes.

Q. Okay. No abscess?

A. No, I did not write abscess, no.

Q. So there is nothing in the chart where you, Dr. Bonds, diagnosed that he had one abscess, much less two; is there?

A. That's not what is written in the chart.

Q. Dr. Bonds, I want to turn now to the next time you took care of Jeremy Bohn, okay?

THE COURT: I think now is a good time for our morning break. It's 10:28. Fifteen-minute break. Don't talk about the case with anybody; don't do any independent research. See you back at quarter of.

(Whereupon, the jury was then excused from the courtroom)

THE COURT: Can all counselors approach for a second?

(Discussion off the record at the bench)

(Recess taken at 10:28 a.m.)

(Proceedings after recess)

THE COURT: If you would try to keep your voice up, too. Thank you.

(Whereupon, the jury was brought back into the courtroom)

Mr. FRANKEL: May I proceed, your Honor?

THE COURT: Yes, you may.

CONTINUED DIRECT EXAMINATION BY MR. FRANKEL:

Q. Dr. Bonds, on that first visit, May 23rd, 2006, you took care of two teeth, B and I, right?

A. Yes.

Q. Those were the two teeth you pulled, right?

A. Those were the two teeth I extracted, yes.

Q. And then Jeremy came back to the clinic as he was told to at the end of August and Dr. Aman took care of teeth D, E -- I'm sorry, D, E, F and G. Do you know that from looking at the chart?

A. Yes, it was August 31st, 2006.

Q. So from May 23rd to August -- August 31st, did you say?

A. Yes, August 31st, 2006.

Q. -- Jeremy was not at the clinic, but he came back when he was asked to and Dr. Aman did the treatment, and then he was -- his mom was told to bring him back again in October, and you saw him on his next visit; is that true, October

11th?

A. Yes.

Q. And on that visit, you took care of teeth J, K and L?

A. Yes.

Q. Those were teeth that you had planned in May would get fillings, correct?

A. Yes.

Q. Between the time Jeremy left on May 23rd and the next time you saw him, which was October 11th, did you hear any reports of any problems he was having with his teeth?

A. No.

Q. Any pain or discomfort or any other kind of problems?

A. No.

Q. So you said you thought it was fine to hold off on treating J, K and L from May to October, right?

A. That's when he was scheduled.

Q. And whatever you want to say about the treatment of teeth J, K and L, we can all agree it wasn't an emergency, was it?

A. No, it wasn't an emergency.

Q. He was back at the clinic because you and your colleagues told Ms. Varano he needed treatment and should come back. It's not as if something was going on and he felt like he needed treatment, other than what you told Ms. Varano?

Mr. STEVENS: Objection as to form.

THE COURT: It was kind of repetitive, so sustained.

Q. I'll try again. Do you know of any reason why Jeremy was back at Small Smiles clinic in Syracuse in October, other than you had said to Ms. Varano he needs all these teeth worked on?

A. That was his next scheduled appointment, yes.

Q. Okay. When he came back on October 11th and he saw where he was, he was very anxious, wasn't he?

A. Yes.

Q. He had been through the experiences that we've talked about this morning on May 23rd, right?

A. Yes.

Q. And he had been back at the end of August for more treatment from Dr. Aman, right?

A. Yes.

Q. And so here he comes for his third visit and you're going to be assigned as his dentist again, right?

A. I wouldn't say assigned, but yes, I did see him that day.

Q. When I say assigned, I'm not sure there's been any testimony about this, so let me ask you: If I brought my son to the Small Smiles clinic when you were there in Syracuse, would I get the same dentist each time?

A. If you requested it, yes.

Q. If I didn't know or didn't request, would I just be assigned to the dentist who happens to have time that day to see my child?

A. We didn't assign any patients to any particular dentist.

Q. Okay. So just as an example, Jeremy saw you; he saw Dr. Khan; he saw Dr. Aman, different times, different dates. Ms. Varano didn't know any of you. How was it that Jeremy got to you?

A. I guess I was the available provider at the time and he was there for a scheduled appointment.

Q. Okay. And so someone on the front desk said, "Here's the room to go into," and you showed up as the dentist, right?

A. I can't recall what took place that day.

Q. In any event, you were the dentist on October 11th, right?

A. Yes.

Q. On that day, Dr. Bonds, did you try any basic behavior management techniques on Jeremy?

A. That's what I would normally do.

Q. I hear what you're saying. I'm asking you whether you remember it or whether it's in the chart?

A. It's not written in the chart.

Q. It's not in the chart and you don't have any memory of it, do you?

A. Just -- it's not written in the chart but it is what I normally do.

Q. And I asked you in your deposition about that on Page 465. I asked: "Did you in this visit on October 11th, 2006, did you try any other forms of behavior management before you restrained him again?" Do you see -- I'm sorry. I should have let you find the place. Excuse me. Page 465, Dr. Bonds.

Mr. STEVENS: Objection. Improper use of the deposition. It's not contrary.

THE COURT: I'm not sure if it is because I haven't heard it.

Mr. STEVENS: May we approach? May we approach, your Honor?

THE COURT: Yes.

(Discussion off the record at the bench)

Q. Did you offer nitrous oxide as an alternative to Ms. Varano before you put Jeremy back in a papoose board?

A. I can't remember.

Q. You did know that -- before you treated Jeremy on October 11th, did you go back and look at the chart to see what had happened to him since the last time you saw him?

A. Yes, that's what I normally do, is review the chart

before seeing a patient.

Q. And did you see in the chart that Dr. Aman had treated Jeremy just a few weeks earlier with nitrous oxide and hadn't required putting him in a papoose board?

A. That's what is in the chart, yes.

Q. All right. So you knew that at least Dr. Aman was able to manage Jeremy without a papoose board, right?

A. That's what is in the chart, yes.

Q. Nitrous oxide, Dr. Bonds, does it take time to get the nitrous oxide to take effect when you give it to a patient?

A. Well, yes, because the patient has to actually have it into the lungs for it to be effective. Yes.

Q. Do you first start with -- is there something called titrating nitrous oxide? Is that right?

A. Yes.

Q. Explain what that is.

A. You start out with as much oxygen as possible and then you slowly add the nitrous oxide until the patient feels the effects, which is -- I describe it as butterflies in the belly or tingling in the hands, and they start to feel more relaxed.

Q. And that takes a little bit of time to work, right?

A. Yes.

Q. Dangerous to try to give you too much nitrous too fast?

A. Yes.
Q. Were you qualified to give nitrous oxide to Jeremy Bohn?
A. Yes.
Q. Did you think you were qualified? I don't mean legally qualified, but I mean, had the skills to be able to utilize nitrous oxide?
A. Yes.
Q. But you didn't offer nitrous oxide to Ms. Varano, did you, sir?
A. No.
Q. And you didn't offer a deferral, either, correct?
A. I'm not sure, but that is what I normally do, that or reschedule.
Q. You can't recall whether you offered deferral to her, can you?
A. I can't remember that I actually did, but it is what I normally do.
Q. You had deferred the treatment for four-and-a-half months, so if the behavior was an issue, it certainly was easy enough to defer a little bit longer, wasn't it, sir?
A. Yes.
Q. No emergency, no urgency, was there?
A. No.
Q. And did you offer Ms. Varano a pediatric specialist --

if you couldn't handle Jeremy's behavior issues, did you offer to send him or suggest that maybe he goes to somebody who's had more training than you in managing children?

A. Around that time, yes, we did offer to refer to Eastman Kodak, where they did do sedation; also I believe Syracuse University offered sedation as well.

Q. I'm asking whether you remember actually offering to Ms. Varano?

A. I don't specifically remember offering to Ms. Varano.

Q. Instead, what you did was you told her that just as before --

THE COURT: Just a minute.

(Sirens going by)

Q. You told her, just as before, that in order to treat Jeremy, he needed to be put back in a papoose board so you could fill his three teeth, didn't you?

A. That is the technique that we used that day, yes.

Q. And you presented her with the same consent form containing the same information as you had in May of 2006, right?

A. Yes.

Q. Same statements about risk, that there weren't any risks, right?

A. Yes, the same form.

Q. Okay. And you signed it and she signed it?

A. Yes.

Q. Did you believe that the statement was true, that there were no known risks to the immobilization procedure?

A. In my experience, yes.

Q. I'm sorry?

A. Yes.

Q. You believe that there are some risks?

A. Possibility of having marks or bruises from moving around. Of course, the child could be crying or upset because he doesn't like it.

Q. So when you told Ms. Varano there were no known risks, you did so on this form because this is the form you were given to use by FORBA; is that true?

A. This is the form that we used at the office, yes.

Q. And that's why you used it and that's why you used it with her, correct?

A. Yes.

Q. And it doesn't say anything about bruising or scraping or anything else? It says there aren't any risks, right?

A. Yes, that's what it says.

Q. Okay. This time -- you did put Jeremy back in a papoose board, didn't you, sir?

A. Yes, I used the stabilization, yes.

Q. Okay. And this time did you monitor his vital signs?

A. Yes.

Q. If a child's heart rate gets up to, say, 150 to 170, Dr. Bonds, that's a rate you better stop the procedure and get the kid out of the restraint; isn't that true?

A. That is a range that once it's -- that I would have concerns, but once it's above that, then yes.

Q. And when you started, Jeremy Bohn's heart rate was 204, wasn't it?

A. Yes.

Q. 204. Is that -- have you ever seen a heart rate any higher than that on your charts?

A. On my charts?

Q. On your dental charts that you've done where you put kids in papoose boards?

A. Not that I've seen in my charts, no.

Q. No. And his oxygen saturation level, it says 88 percent, right?

A. Yes, that's what it says.

Q. Any level, in your opinion, below 95 percent, the alarm comes on, right?

A. Yes.

Q. And it's dangerously low if it drops below 95 percent, right?

A. Yes.

Q. And is it true, Dr. Bonds, that you should never put a kid like this in a papoose board whose vital signs at the

beginning are 204 for his heart rate and 88 percent for his oxygen saturation rate?

A. Well, that's what it was when the treatment was initiated, yes, when we started.

Q. I'm sorry?

A. I said yes, that's what it was when we started.

Q. I know it's what it was. My question, sir, is it true that a reasonably prudent dentist would never put a kid in a papoose board who -- where his vital signs showed he had a 204 heart rate and an 88 percent oxygen saturation rate?

A. Well, it would depend upon the situation and also we would be monitoring to see if the heart rate did decrease and if the oxygen saturation did increase.

Q. I'm sorry. Are you saying that it would be reasonable for a dentist to restrain a child with a heart rate of 204 and an oxygen saturation rate of 88 percent, to do three fillings?

A. No.

Q. No, it wouldn't, would it? But you did. You started immediately with Jeremy in a papoose board, drilling and filling three teeth, correct?

A. Yes.

Q. And before you started to drill on his teeth, while he was in a papoose board, did you give him a local anesthetic to numb him up?

A. In this situation, no, I did not.

Q. If a cavity extends into the dentin part of the tooth, a reasonably prudent dentist gives a local anesthetic, right?

A. Well, the option would be to evaluate exactly how much decay was remaining, so if it's something we could use, say, a spoon excavator, a small spoon that we use to remove decay, or what we would call a slow speed, the slower means of removing decay, then if we could remove that without pain, then we would remove the decay without causing pain to the patient.

Q. Did you use a spoon on Jeremy Bohn?

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

Q. You used a spoon when he's got a heart rate of 204 and an oxygen saturation rate of 88 percent and he's in a papoose?

A. After removing as much decay as possible and then to remove the remaining decay, yes, I would use the spoon.

Q. You thought his cavities were so small, so tiny, that you didn't think it would hurt him to drill and fill his teeth using -- without a local anesthetic; is that right?

A. Yes.

Q. But that his treatment was so urgent that he needed to be put in a papoose board so he could have his three teeth filled when his vital signs were off the charts?

A. No, his behavior at the time was what warranted or

made it necessary to use the stabilization.

Q. What was the hurry?

A. In my opinion, there was no hurry.

Q. It would have been easy enough to defer the treatment, right?

A. Yes, and as I said, that's what we normally do. We offer the option of having a referral or if you want to reschedule, you can reschedule.

Q. Are you saying to the ladies and gentlemen of the jury that you told Ms. Varano, "Sorry that your child's heart rate is 204 and 88 percent oxygen saturation rate. We can defer this or we can just do it today anyway in a papoose board"?

Mr. STEVENS: Objection.

THE COURT: Overruled.

A. I would say I gave her the options of nitrous oxide, referral or we could reschedule.

Q. But it's not written in the chart; that's what's you're saying?

A. It's not written in the chart, but that's what I normally do.

Q. Did you withhold the local anesthetic from Jeremy Bohn so you could get the work done in a speedy manner?

A. No.

Q. It would have slowed you down to give him a local, wouldn't it?

A. No.

Q. I ask you to look at Page 468 of your deposition, Line 20. "Would it have been easy to give Jeremy some lidocaine?" You said: "Well, I'm not sure at the time because I can't remember everything of the situation, but apparently these were not large enough where they definitely needed anesthesia. What we were trying to do was work expeditiously to help the child get the work done in a speedy and expeditious manner, where we were not keeping them in the stabilization very long and we're not having a very long visit." That was why you didn't give him the local, wasn't it? You wanted to get it done speedy.

A. No.

Q. That's what you said in your deposition. Were you telling the truth?

A. What I'm saying here is that because we were using stabilization that we don't like to have it too tight or for too long, that I'm planning my -- at the time, what I did to evaluate the patient, I didn't deem that he needed local anesthesia because they were smaller, but that's not why I did it. I did not use local anesthesia to work more speedily.

Q. Is that what you testified in your deposition, you wanted to do it speedy and expeditiously?

A. Yes, I wanted to help this child get the work done in

an expeditious manner or speedy manner. Yes, that is what I said.

Q. And that was the same reason you put him in the papoose board to begin with, right, speed it up?

A. No, he was placed in the papoose because of his behavior.

Q. Well, if you had taken the time to do traditional basic behavior management, it might have taken a lot longer than just strap him in and go, right?

A. Well, we never just strapped anyone in and just -- go, as you said. We never did that.

Q. Well, you get the consent form signed; I'll give you that. But other than that, there's nothing in the chart for any of the three times you restrained him to suggest you did anything else; is there?

A. There's nothing written in the chart, but I mean we didn't write in the chart that we put on gloves or a mask, either.

Q. Dr. Bonds, are you comparing using basic behavior management and showing it doesn't work to justify using more aggressive use of a restraint to putting on a glove?

A. No, that's not what I'm saying.

Q. You knew that the people at FORBA were evaluating production levels, did you?

A. At that time?

Q. Yes, sir.
A. I'm not quite sure, but after hearing it here, yes.
Q. The more money you made for them, the better it would be for you; is that true?
A. I wouldn't put it that way.
Q. So to sum up, on October 11, the treatment on October 11, 2006, you put Jeremy in a papoose board; his heart was going at somewhere between 153 and 204. You drilled and filled three of his teeth without local anesthetic; is that right?
A. I placed restorations, yes, without using anesthesia.
Q. While he was in a papoose board?
A. While he was in stabilization.
Q. So how often, Dr. Bonds, do you put children in papoose boards and drill on them without local anesthetic?
A. I couldn't give an estimate of exact numbers; I'm not sure.
Q. Do it all the time?
A. I don't do anything all the time.
Q. Well, give us some estimate.
A. I really can't give an estimate. I don't --
Q. Let's turn now to the last treatment date that I want to -- that's at issue here that you're involved in, at least as far as I know, and that's October 23rd. Okay, so now, Dr. Bonds, did you ask that Jeremy come back in a couple of weeks

to do more work?

A. I did not do any scheduling, no. Scheduling is done by the front desk.

Q. I understand that. The patient's parent goes to the front desk; she would -- ordinarily would the patient know they need to come back or how would it be that the parent would go and say, "I need another appointment"?

A. Because they would stop at the front desk to make appointments before they left.

Q. Did you tell her, "There's still more work to be done, Ms. Varano"?

A. Well, yes.

Q. And then the front desk schedules when the appointment is going to be, unless it's something you think is urgent enough that you tell them when they need to be back, right?

A. Yes.

Q. So Jeremy came back a couple of weeks later and now at that point you had taken care of B and I originally; Dr. Aman took care of E, F and G, and you had done J, K and L, so there are only a couple of teeth left to take care of, right?

A. Yes.

Q. And you were getting ready to do that on October 11th. That would be A and S, right?

A. That was October 23rd.

Q. I'm sorry; you're right. That was October 23rd.

Thank you for correcting me. Jeremy came back to the clinic on October 23rd, and at that time you described his behavior as uncooperative, sullen, withdrawn, and rated as a negative; is that true?

A. Yes.

Q. The treatment that you were about to do on October 23rd was based on what you had seen on May the 26th, right -- I'm sorry, May 23rd?

A. Yes, the 23rd, yes.

Q. And the X-rays that were taken on May 23rd, did those X-rays tell you anything about the condition of teeth A and S?

A. Radiographically, no.

Q. No?

A. Radiographically, no. By X-ray, no.

Q. X-rays did not justify doing any work on those teeth, did they?

A. But the examination by visual/tactile means is where I found the decay.

Q. Okay. We've been through that. There's not a record of that, but you just say that's what you normally do, right?

A. That's what I normally do.

Q. It had been five or six months. Did you consider taking new X-rays?

A. Well, normally patients have X-rays taken every six

months, and we would take X-rays if there was an emergency situation, what we call a limited oral examination or an emergency.

Q. But the X-rays he had didn't tell you that he had cavities, did they?

A. The radiographs did not, but as I said, we also depended on using the explorer, the mirror, the air/water syringe as well.

Q. And it had been five months since you'd done that, right?

A. Yes, but also I normally check the teeth prior to doing any treatment.

Q. That's what a good dentist will do, is when there's been a -- particularly that long of a delay, but any time that you see a patient that you haven't seen for a little while, you need to actually conduct a new exam to confirm the need for the treatment; isn't that true?

A. Yes, you definitely need to visually see or use the explorer to make sure that there are caries there, yes.

Q. And there's a place on the chart to show when you do such an exam, right?

A. No.

Q. Well, right here, right at the top, it says, "give medical history," you say yes, no changes per parent. Another treatment plan and X-rays reviewed. You said you did

that. That was the stuff that was five months old. Then there's a place, "LOE." What does that stand for?

A. Limited oral examination.

Q. Okay. "Confirm the treatment plan, rule out other conditions." What did you do about that, Dr. Bonds?

A. Well, LOE is more of a billing thing, but it is what we normally do for an emergency. If a person comes in for an emergency, we have to do a limited oral exam, focus on the area you're coming in for.

Q. The chart shows you did not do a limited oral exam, correct?

A. No, I did not do an LOE, a limited oral exam.

Q. And there's nothing else in the chart that says you did any exam on October 23rd, is there?

A. Well, that's not what's in the chart, but that's what I would normally do.

Q. So even though the chart says you didn't do it; there's no notes that say you did, you're telling the ladies and gentlemen of the jury you did?

A. I'm saying that is what I would normally do.

Q. Okay. This time, Dr. Bonds, did you give Jeremy a local anesthetic before you filled and drilled two more of his teeth?

A. No, I did not.

Q. If a dentist drills into the dentin part of the tooth,

it's going to hurt, isn't it, sir?

A. It would depend on the person. It varies from person to person.

Q. The reason that dentists routinely give local anesthetic is to avoid that pain; isn't it?

A. It is used for pain management, yes.

Q. Do you routinely drill and fill little kids' teeth without local anesthetic, sir?

A. I wouldn't say routinely, but on many occasions, yes, I've worked on children without using local anesthesia.

Q. Can you tell us how many procedures you've done where you've filled and drilled kids' teeth without a local?

A. I honestly could not give you an estimate or number.

Q. Every one of those in the last seven years has been for this Small Smiles company, hasn't it?

A. Yes.

Q. You thought that the cavities were so tiny that you could fill them and, in your words, Jeremy could tolerate it, right?

A. I believe that's what I said, I believe.

Q. And your objective, again, was to get the work done timely; is that what you said?

A. Yes. With a patient like this, you do want to keep the appointments as short as possible, yes.

Q. And by withholding the local anesthetic, it allowed

you to drill and fill and complete the procedure faster, true?

A. Not necessarily.

Q. You thought Jeremy could withstand the pain; is that true?

A. I thought that the cavities that I was working on were superficial enough that I could do them without using local anesthesia.

Q. And you considered that a win for you, correct?

Mr. McPHILLIAMY: Objection, argumentative, speculative.

THE COURT: Overruled.

Q. Is that what you told me, it was a win for you?

A. It was a win for me?

Q. Yes, sir.

A. No, I don't ever think I said anything about anything being a win for me.

Q. Okay. Would you look at Page 475 of your deposition, Dr. Bonds?

A. You said 473?

Q. 475, sir.

A. 475, okay.

Q. Beginning at Line 19. I asked you: "At three years old, is it a surprise to you that a three-year-old might be reluctant to come for dental treatment after being restrained

twice and having six or seven teeth worked on?" You said: "Well, seeing as his behavior improved, you know, it varies from child to child. Some children come in at two o'clock, sit in the chair, open their mouths and let you do whatever you need to do, but I get a 60-year-old that can come in and act like a 2-year-old, flipping out in the chair, so it varies from person to person. However, in -- in this case, it looked like he improved. We were able to get a treatment done without anesthesia, without using immobilization, and to me -- to me, that's a win."

Did I ask you those questions and did you give those answers?

Mr. STEVENS: I'm sorry, he didn't finish.

Q. Do you want me to keep reading? Okay. "In my experience, some kid, they may need it one time or they may just need nitrous, or many things -- our goal is ultimately to get them to have treatment without these crutches, without needing the immobilization, without needing the nitrous." Was a local anesthetic on a four-year-old a crutch, Dr. Bonds?

A. That's not what I said.

Q. Was it a win for you to get this done without a local anesthetic?

A. I think that what I meant by this, that is a win for the patient, actually.

Q. You said it was a win for you, didn't you?
A. I said "and to me, that's a win."
Q. Yes, sir. Do you think it was a win for Jeremy?
A. That he got his treatment done?
Q. That he was put in a papoose three times; he had seven teeth drilled and filled -- I'm sorry, five teeth drilled and filled on without local anesthesia; his heart rate was 204. Do you think that was a win?
A. I think that he had his treatment completed to the best of my ability.
Q. Dr. Bonds, since you've been working for FORBA, you understood they could fire you on 90 days' notice; is that true?
A. Yes.
Q. And you know that if they fire you, you can't work at another Medicaid clinic within -- I don't know how many miles -- for five years?
A. Yes.
Q. Dr. Khan was the lead dentist in Syracuse when you were treating Jeremy Bohn; is that true?
A. Yes, I believe that's true.
Q. Dr. Khan would call you and the other dentists into his office and show you on his computer your production numbers, wouldn't he?
A. I can't recall if he called us into his office or --

Q. Okay. Did he give you sheets with the numbers on them?

A. We may have had production sheets, yes.

Q. You knew that he was watching your numbers and the numbers of all the other dentists in the office, correct?

A. Well, in my case, it was just so that I can know exactly what I had done for the day.

Q. And he would meet with you and the other dentists to discuss what your numbers were, correct?

A. We had monthly doctors' meetings, yes.

Q. And at those meetings, discussed whose billings were higher, whose billings were lower and what needed to be done about it, right?

A. Um... no.

Q. You were one of the dentists who kept their numbers up, correct?

A. I guess.

Q. And in exchange, you got raises and you got promotions to lead dentist, right?

A. Yes, I was promoted, yes.

Q. And your salary went from $22,000 a year to $200,000 a year, right?

A. Yes.

Q. And you still work there today at one of the Small Smiles clinics, don't you, sir?

A. Yes.

Mr. FRANKEL: That's all I have, your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION BY Mr. FIRST:

Q. Good morning, Dr. Bonds. How are you?

A. Good morning.

Q. Dr. Bonds, I just have a few questions for you this morning. As I understand it, you started working at the Small Smiles clinic in Syracuse as a dental assistant?

A. Yes.

Q. And that would have been in May of 2005?

A. Yes.

Q. And during that period of time, what were your responsibilities as a dental assistant?

A. I would retrieve the patient from the waiting room. If there were -- have the child seated, prepare the room, make sure the instruments were there for the provider. I would do chair-side assisting where I would hand the particular instruments to the provider while they were working; I would do documentation as best I could, and when it came time to dismiss the patient, I would walk the patients out and then return to clean the area and move all used instruments to sterilization.

Q. Okay. And then there came a time, roughly about a

year later or less, I think, that you became licensed as a dentist?

A. Yes.

Q. And that would have been in or about April, was it, of 2006?

A. April or May of 2006, yes.

Q. All right. And you continued to work -- well, let me withdraw that.

You know -- you've heard in this courtroom Old FORBA, correct?

A. Yes.

Q. All right. So when you were hired as a dental assistant in May of 2005, you were hired by the dental management company under Old FORBA, correct?

A. Yes.

Q. And then you became a dentist about a year later?

A. Yes.

Q. And then you continued to work as a dentist until the dental management company and the clinics were sold to what has been called in this courtroom New FORBA, on September 26th, 2006; is that correct?

A. Yes.

Q. Okay. And a number of these appointments actually occurred after that point in time? The October appointments occurred after September 26th, 2006, but I do want to ask you

this question: During that period of time you were working with the old management company, Old FORBA, okay?

A. Okay.

Q. During that period of time, did anyone from the management company ever pressure you --

A. No.

Q. -- well, let me finish the question.

A. Okay.

Q. Ever pressure you or try to influence you regarding your dental decisions?

A. No.

Q. And when we say "dental decisions," we're talking about the diagnosis and treatment, correct?

A. Yes.

Q. You saw the list of items that counsel for the Plaintiff has put on the board. Did anyone ever try to influence you regarding those decisions?

A. No.

Q. Did anyone in that period of time interfere with your professional judgment with respect to any patient?

A. No.

Q. So the decisions you made, whatever they were, were your own based upon your education, your experience, and what you were seeing with the patient?

A. Yes.

Q. And when I say, "what you were seeing with the patient," obviously we have talked about tactile, which is feeling; I'm talking about all your observations and X-rays and whatever of the patient?

A. Yes.

Q. Did you ever feel any pressure at any time to essentially commit dental malpractice in the care and treatment of these kids?

A. Never.

Mr. FIRST: That's all I have. Thank you.

THE COURT: Mr. McPhilliamy?

CROSS-EXAMINATION BY Mr. McPHILLIAMY:

Q. Good morning, Dr. Bonds.

A. Good morning.

Q. I have a couple of questions also. I believe you told us that Jeremy -- withdrawn.

I believe you told us that May 23rd, 2006 was the first time Jeremy was seen at the Small Smiles in Syracuse?

A. Yes.

Q. And you saw him on that date; is that correct?

A. Yes.

Q. And I believe you told us that at that time he had 20 teeth in his mouth?

A. Yes.

Q. And of those 20 teeth, how many did he need some type of dental treatment on?

A. Eleven.

Q. Okay.

Mr. McPHILLIAMY: Can I have 23? Thank you.

Q. Doctor, you have the original copy of the chart there?

A. Yes.

Q. Please turn to the treatment plan authorization form. It's the one that carries the date May 23rd, 2006.

A. Yes.

Q. So one thing that wasn't gone into is this notation under tooth letter L, which says 6 MRC? What does that mean?

A. That is a six-month recall visit or the regular return for your cleaning.

Q. That would be a checkup visit?

A. Yes.

Q. Now, on this treatment plan, you list tooth by tooth and what treatment each tooth needs. Let's start with tooth B. You wrote "ext," and that's for what?

A. Extraction.

Q. And then you have a slash mark and you write -- is that pulp plus CR?

A. Yes, that means the possibility of doing a pulp and crown.

Q. So were those the two treatment options for tooth

letter B of May 23rd, 2006?

A. At that time, yes.

Q. Okay. Now, if you would have performed the pulpotomy and stainless steel crown on tooth B, how would that affect your billing or production for this visit for Jeremy as opposed to your billing for extracting tooth number B?

A. Oh, it would have definitely been higher if I'd have done the pulp/crown, definitely would be higher.

Q. Okay. Moving along to tooth letter I. Again, you wrote "ext/pulp plus sign CR?

A. Yes.

Q. Pulp plus -- CR is pulpotomy plus crown?

A. Stainless steel crown, yes.

Q. Again, would your billing or your production for this day for Jeremy have been higher if you utilized the option of a pulpotomy and stainless steel crown for tooth I?

A. Yes, definitely would have been higher.

Q. And on this date, which option did you choose for tooth letter B?

A. I choose to do the extraction.

Q. And tooth letter I, what option did you choose?

A. I chose to do the extraction.

Q. Now, you told us before that there were eleven teeth that needed some type of dental work, and you chose to work on two of those teeth; is that correct?

A. Yes.

Q. And can we agree that if you want to increase your billing or increase your production, your daily production by working on Jeremy, you could have worked on more teeth in his mouth than the two that you chose to work on?

A. Yes, I could have.

Q. In fact, you could have worked on upwards of nine additional teeth on that day; is that a fair statement?

A. Yes.

Q. Did you work on any of those additional nine teeth?

A. No, I did not.

Q. And I believe that you next saw Jeremy on October 11th, 2006; is that correct?

A. Yes.

Q. Now, when Jeremy walked into the office on October 11th, 2006, how many teeth in total did he have left that needed some type of dental treatment, as noted on his treatment plan authorization form?

A. At that time, he had five more teeth that needed to be addressed.

Q. And you treated him on this visit; is that correct?

A. Yes.

Q. And you worked on three of those teeth?

A. Yes.

Q. And can we agree that if you want to increase your

billing, increase your production per patient, P.P.P., on Jeremy, you could have worked on either one or both of those additional teeth?

A. Yes, I could have.

Q. Did you?

A. No, I did not.

Q. Next time you saw Jeremy was on October 23rd, 2006; is that correct?

A. Yes.

Q. And on that date, you worked on his two remaining teeth in the treatment plan, correct?

A. Yes.

Q. So by the end of the October 23rd, 2006 visit, was all the treatment that was in the initial treatment plan taken care of?

A. That was the last of the treatment that was from the original treatment plan.

Q. Now, did you ever see Jeremy again after October 23rd, 2006?

A. Yes, on February 22nd, 2007, when he returned for his cleaning.

Q. Is that that recall visit that you made reference of?

A. Yes.

Q. The six-month recall?

A. Yes.

Q. And did you examine his mouth on February 22nd, 2007?
A. Yes.
Q. And did you prepare a written treatment plan for this date?
A. Yes.
Mr. McPHILLIAMY: 42.
Q. Now -- thank you. Treatment plan authorization form, on the bottom dated 2/22/07. Is this the treatment plan that was developed as a result of your February 22nd, 2007, recall visit?
A. Yes.
Q. Okay. Now, when you saw him on this date, what did you do for him, for Jeremy?
A. He had X-rays taken; he had his teeth cleaned, and he had an examination.
Q. And as a result of the -- withdrawn.
Was the examination performed by you?
A. Yes.
Q. As a result of your examination on February 22nd, 2006, did you determine whether or not Jeremy needed any treatment at that time?
A. I found one tooth that had an occlusal -- had occlusal decay.
Q. And that was tooth letter T?
A. Yes.

Q. Now, are you familiar with the term "conversion"?
A. Yes.
Q. And is it your understanding that in this context, conversion is taking a patient from the hygiene room and then moving them on over to the operative room?
A. Yes.
Q. Okay. Now, would you agree that on February 22nd, 2007, if you want to increase your billing, increase your P.P.P., your production, you could have also, in addition to the examination and cleaning that was performed, treated tooth letter T?
A. Yes.
Q. And did you do that on this visit?
A. No, we did not.
Q. Was that tooth done on the next visit down the line?
A. Yes.
Q. And you did not see Jeremy on that date; is that correct?
A. No, I did not.
Q. So going back to February 22nd, 2007, did you convert Jeremy from a hygiene patient into an operative patient on that day?
A. Not on that day, no, I did not.
Q. Did you ever see Jeremy again after the February 22nd, 2007 visit?

A. No, I did not.

Mr. McPHILLIAMY: Nothing further, your Honor.

THE COURT: Okay. Mr. Stevens?

CROSS-EXAMINATION BY Mr. STEVENS:

Mr. STEVENS: 139, please.

Q. It's still good morning.

A. Good morning.

Q. Would you please turn to the operative report for Jeremy's fourth visit, which is your third visit with Jeremy, October 23, 2006. Would you blow up this section here? I'm going to ask you to go up another box...

Do you remember being on the stand a few moments ago with Mr. Frankel asking you about this visit and blowing up this box, displaying it on the screen, the part of that chart that shows that no local was used on that day, October 23, 2006?

A. Yes.

Q. And do you remember him asking you questions about whether this was a win for Jeremy?

A. Yes.

Q. Now -- Greg, would you please blow up the box? Isn't it true that the part of the chart that we didn't see is the part that demonstrates there was no immobilization used on

that date?

A. No, we did not use stabilization -- immobilization that day.

Q. And, Doctor, was that the part that's the win for Jeremy?

A. That part, I would consider that a win for Jeremy because he was improving.

Q. And, Doctor, you saw Jeremy on four occasions; isn't that true?

A. Yes.

Q. And in terms of Jeremy needing immobilization for safety, that occurred on two occasions; was that correct?

A. Yes.

Q. And on your third visit with Jeremy, did you have to use that technique?

A. No, I did not.

Q. Did you recommend that technique to the mother on the third visit?

A. No, I did not.

Q. Did you recommend that technique on the fourth visit?

A. No, I did not.

Q. And how do you feel about that?

A. Well, I would -- the thing of it is we really don't want to use the stabilization if we don't have to, so if it's something we can get the child to improve where we don't have

to use it again, whether it's by talking to them, having the mother in the room with them, however we get it done, we just want to make sure the child is improving in behavior and that he can continue getting dental treatment.

Q. Let me take a breath and move back to the beginning a little bit. Dr. Bonds, will you tell the jury where you were born and raised?

A. I was born and raised in Eden, North Carolina.

Q. Very briefly, a little bit about your family, please?

A. I'm the oldest of three sons. Lost my father in '87, my baby brother is a police officer, and my mom and my brothers are all still back in Eden, North Carolina.

Q. And did there come a time in your life when you decided to be a healthcare provider of some sort?

A. My mom said I started saying it when I was two, three, four years old I was going to be a doctor, so it's been pretty much that since I was a kid.

Q. And how did you achieve your ultimate goals?

A. Well, after high school I was accepted to Morehouse College in Atlanta, Georgia. I received my B.S. in biology there. I was also accepted to Howard University's college of Dentistry, which, also you heard, took me a little time, but I did receive my degree. My training after that was --

Q. Can I ask you about Howard University College of Dentistry?

A. Yes.

Q. Did you have clinical experience at that place?

A. Oh, yes, definitely. We had to -- at our school at that time, we didn't have like a patient pool, so we actually had to, actually most times, go out and get our own patients. That's kind of the reason why it took me a little while to get all my requirements done because sometimes patients wanted to be paid; sometimes patients just didn't show up, but we still had these requirements that we had to finish.

Q. Doctor, at the end of dental school, you told the jury or the jury has learned that there was a Part 1, Part 2 of the dental exam, but they didn't hear anything about what is called the NERBs, the North East Regional Board exam. Is there a clinical exam you have to pass before you can become a dentist and practice?

A. Yes, there's that part of it.

Q. What is the NERB?

A. The North East Regional Boards are -- a portion of it is written, jurisprudence, which in that case, Washington, D.C., but the other portion is where we actually had to have a patient show up, where we had to do a filling in between the teeth in the back. We also had to do a filling in the front. We had to -- we call it a nerve tooth, but it was practice for root canals, that we actually had to do that in a timely fashion, clean it out and place a filling. I also

had to --

Q. Let me interrupt you a second. Are you doing this on your own? Are there people watching you? How does it work? Set the stage, please.

A. They have a system of examiners where, say for the portion I was doing the fillings, you would prep the two, and the patient is sent blindly back to whichever examiner is looking at the prep. They would approve that or tell you if there was something to change, to make the preparation proper, something of that nature. If it was approved, the patient was sent back and then you had to do your restoration. The front teeth, we had to use the two-colored filling, and on the back teeth, the silver fillings or amalgam. Another section is actually on a mannequin head that we had to prep teeth for crowns, or what you call caps, or a bridge. And we also had to take the impression on a patient for a complete denture in order to pass the North East Regional Boards.

Q. And so part of that is the clinical exam, being graded by people that you've never met before, true?

A. Correct.

Q. Did you pass that?

A. Yes.

Q. First try?

A. Yes.

Q. Were you good with your hands?

A. Yes, always.

Q. Doctor, after the College of Dentistry, what did you next do with respect to a residency?

A. I was accepted into Columbia University's Advanced Education General Dentistry P.C. program. This was --

Q. Tell them what P.C. means?

A. Primary care. This was not the program that was within the school. We actually went to different sites around the city, some like Phoenix House, which is a recovery center where we actually went into the center and helped perform dental treatment on the residents there. There was also a -- I guess it was a home for transient children or transgender teenagers, that we would literally take a mobile unit and a folding chair, because some of these kids when they went to dentists, they didn't want to see them, so we went there and provided the treatment for them. I also worked with Harlem United, which is Harlem, New York, where they also treated patients with aids, H.I.V., things of that nature. We -- I also had -- at Columbia University, what we call the D.C. Aids, where that was strictly aids patients and H.I.V. patients, where we learned to monitor viral loads, my first experience using topical fluoride in adults, and so it was quite an experience.

Q. What was the thrust in terms of public health or

otherwise? What was the thrust of the program and what they were trying to impart to these students?

A. Well, what that program was about was trying to get us to understand how important it is to become a community dentist, to become someone who pays attention to public health, because I did learn a few things about public health as well at that time, but creating, I guess, a mentality of certain communities that need serving, and a lot of these were underserved communities.

Q. And what effect did that have on you?

A. Well, I mean -- I used to say a lot of times -- excuse me. I used to say a lot of times that if it wasn't for the grace of God, I'd be these patients. I would have been one.

Q. Thank you.

A. Excuse me.

Q. Take a drink of water. After your -- did you also use the mobile van to go into some neighborhoods around Columbia University?

A. Yes, we -- there was a very large population from the Dominican Republic in that area, so I did learn a little Spanish, but also we would go to different community centers and also they had a school that also had a dental clinic within the school so that the kids wouldn't miss hours from school. They could have a set period where they could come in and have treatment done, and that's where we did treatment

there as well.

Q. Without belaboring the point, did you get to work on children who had never seen a dentist before?

A. Yes, quite a few. The one that sticks out to me was the -- I guess they would call Spanish Harlem, a facility called Barbican, where a lot of these folks were just coming into the country, and this was one of the facilities where they helped them get themselves established into some type of healthcare, and that included working with the children as well.

Q. Did you -- following this residency at Columbia University, did you follow up with the second residency somewhere else?

A. Yes, I completed a general practice residency at Harlem Hospital, which is hospital-based.

Q. And will you tell the jury, in general, what did you do over the period of that year?

A. Over the period of that year, we had training from specialists in each type of dentistry, whether it was root canals or orthodontics, whether we did partials or dentures. We had an oral surgery suite where I was actually trained by oral surgeons, and we had a pediatric wing as well. With the pediatric wing, we had a rotation that also coincided with anesthesia where I had an opportunity to have one child that was diagnosed with cystic fibrosis that I assisted in

treating under general anesthesia, and we had another child that we did as well. I can't remember what the diagnosis was, but they were special needs patients that absolutely needed general anesthesia. So the first case I assisted, and the second case, my attending assisted me, so we got to learn how to intubate, how to maneuver around the mouth, how to make sure the breathing tube and everything else is in a correct position so that we can actually get the treatment done and to have the child come out of general anesthesia in a safe way.

Q. As a resident in an accredited residency program under supervision, you're allowed to actually practice dentistry and treat these patients, correct?

A. Yes.

Q. The -- between that period of time and the time you went to -- up to Syracuse, did you have some other dental assistant jobs?

A. Yes, I got jobs where I could part-time, working off the books, whatever I could do to help, you know, keep a little money in my pocket, yes.

Q. And when you went up to Small Smiles in Syracuse for the -- by the way, did something happen at Harlem Hospital which eventually caused you to go to Syracuse? Did you meet your wife there?

A. Yes, I met my wife when I was in residency. A friend

of hers actually came in for treatment and it's another story but yes, and we have been together ever since.

Q. And was your wife from the Syracuse area?

A. No, my wife is actually from the Westchester area. She was born and raised in White Plains, but what brought us here was her sister had moved here a few months prior and we looked at the comparison between the amount of rent you would pay in Westchester as opposed to here, the cost of living, and so we decided to give it a try here.

Q. And you applied for a job as an assistant at Small Smiles?

A. Yes, because that was the only position that I could take, as I was not licensed at the time.

Q. Okay. And what was the sort of discussion and agreement when you interviewed for that job vis-a-vis your hopes and expectations?

A. Well, I had already sent my C.V. in to them, so they knew that I was actually a dentist; I was just not licensed, and what I needed was an opportunity to not only be able to put food on the table for my wife and my stepson but also to have an opportunity to say, if I can get myself together, to get my license together, that I would have a job.

Q. And did you take a job as an assistant?

A. I'm sorry?

Q. You took a job at Small Smiles as an assistant?

A. Yes.

Q. For approximately a year?

A. Yes.

Q. And during that time -- and the goal was to pass the -- as you testified earlier, to pass Part 2 of the written boards?

A. Yes, which -- you know, I had missed by one, two and three points different times. It wasn't like I just completely failed it. It was something that I did need to take the Kaplan Course. I thought I could study on my own, and at the time I could not afford to pay for the Kaplan Course.

Q. So initially you took Part 1, passed that section, took awhile to pass Part 2, but did you ultimately pass it?

A. Yes, I did.

Q. During the year you worked at Small Smiles as an assistant, is it true that you worked -- who did you work with chair-side?

A. Chair-side, it was doctor -- whoever the lead was at the time, and that was as a mentor type of thing, to make sure that I'm kind of learning -- and by observation -- the proper ways of doing things, steel crowns, proper ways of using immobilization, how to interact with the patients in this area, and, you know, that's what I did for the whole year, was sit right across from the lead. Whoever was the

lead at that time, that's who I assisted.

Q. Would those two leads be Dr. Bob Turner and Janine Randazzo?

A. Yes.

Q. And during that approximate one year when you worked chairside with them, can you estimate how many times a week that you would get instruction and clinical observation experience in helping them and being taught by them and using protective immobilization?

A. I would say at least once or twice a week.

Q. Okay. So that would be, over the course of a year, approximately 100 times?

A. 100 to 200. I'm not really good at math like that, but 100 to 200.

Q. Did you consider yourself to be well trained by that experience?

A. Yes. It was an eye-opener for me. And, you know, no two dentists operate in the exact same way. Dr. Bob, we called him the Kid Whisperer. He was really good at talking to the kids and getting them to calm down, getting them to do what, you know, they would like. Dr. Janine came from more of a military background, so gave more of a regimented and more stability to the staff. I just tried to pick up the things that I could learn from them that I could utilize to make myself a better dentist in order to treat the children

properly.

Q. Dr. Bonds, did there come a time when you saw Jeremy Bohn for the first time?

A. I'm sorry?

Q. Did there come a time in May of 2006 that you were working as a dentist, having passed all of your exams and becoming a full-fledged dentist and you had a year of experience chair-side -- having years of experience as a dental resident and otherwise, did there come a time when you saw Jeremy Bohn for the first time?

A. Yes.

Q. Dr. Bonds, the jury has seen this before at the time of my opening. Is this a part of the Small Smiles chart for Jeremy Bohn?

A. Yes.

Q. And when the patient -- when Jeremy was brought in by his mother, when any patient is brought in by the guardian, does the parent fill out something called a patient information form?

A. Yes.

Q. And is that the item which is on the right-hand side?

A. Yes.

Q. And would you tell the jury what did you learn from -- by the way, does the parent sign the form?

A. Yes.

Q. And does it say Kelly Varano right here?

A. Yes.

Q. When Mr. Frankel asked you whether you were some kind of handwriting expert, you have to be a handwriting expert to see the line Kelly Varano on the line where it says mother or guardian?

A. No, I can see that quite clearly.

Q. The mother and father signed the form, and did they give some information about Jeremy, about why he was there?

A. Yes.

Q. And what -- by the way, have you learned in this lawsuit that Jeremy had previously been to a pediatrician who had given him penicillin for swelling on both sides, that he had two abscessed teeth and had seen a dentist who couldn't treat him and sent him to Small Smiles; did you learn that?

A. I learned that --

Mr. FRANKEL: Objection, your Honor. He's misstating the testimony and leading the witness.

THE COURT: Well, I'm going to sustain it on leading.

Q. Can you tell us what you learned from the patient information sheet?

A. When he came in, that he was already on the penicillin and she wrote that he had abscesses on teeth numbers I and B. She wrote there was no other medical issues.

Q. Can you tell the jury, what is an abscess?

A. An abscess is when infection from a tooth or elsewhere -- but it's in this case the tooth, when it's trying to find a way to escape from the source. It creates like a bubble of pus, is I guess what you would call it, and basically what it's trying to do is create an area where you can alleviate the infection.

Q. Now, is that a significant dental condition?

A. Yes. That means that the tooth most likely is infected or has a very large cavity. It could also mean that, you know, it could cause damage to the roots or to the tooth that's developing afterwards as well.

Q. Doctor, when you examined these teeth, as you did, and then you wrote in the diagnoses column nonrestorable, what did nonrestorable mean in this context? And take your time.

A. At this time, nonrestorable meant that the amount of decay to the tooth deemed that there was no treatment we could do to save that tooth, whatsoever. That's what nonrestorable means.

Q. Is it your preference to extract a tooth if the tooth can be saved on a young child?

A. No, I think -- well, in my opinion as a general practitioner, I would much rather save teeth than extract teeth. If I wanted to extract teeth, I'd have become an oral surgeon.

Q. Doctor, what do you know from your own practice -- and, by the way, let me just back up for a second. My colleague, Mr. Frankel, kept asking you whether you pulled these teeth, whether you pulled the tooth. Is that what you do when you extract two teeth like this, I and B?

A. No, that's -- that's just, I guess, a layman's term is "pulling the teeth." After giving anesthesia in order to perform an extraction, you either use what's called an elevator or forceps, but what you're actually doing is you're initially putting pressure downward on the tooth to make the bone itself start to move away from the root of the tooth. We call that luxation, and that's where we would feel it moving back and forth, back and forth, back and forth. Once the bone itself has loosened up a bit, the tooth tends to somewhat fall out, and I guess that's why most people think it's pulling it out.

Q. And those instruments go down the side of the tooth?

A. The elevator, I guess, would be like a straight instrument -- let me demonstrate. If this is the tooth, in between the teeth, you would place it in between the teeth and press downward, and then you rotate it to create an upward lifting motion. The forceps is the instrument that would touch over the crown as far down as possible and that motion we push downward and that's when we would do the same type of motion, as far as moving the tooth back and forth to

create this open space for the tooth to eventually come out.

Q. And, Doctor, on this occasion you used an anesthetic called lidocaine; is that correct?

A. Yes.

Q. And would you tell the jury why you used lidocaine for the two extractions?

A. Well, for the extractions, you definitely want to have some type of pain management. Or you want the patient to be numb. Yes, they could still feel pressure, but you don't want them feeling any type of sharp pain whatsoever.

Q. And, Doctor, if a -- just skipping to another topic for a second, if a cary, a patient's decay is believed to be in the enamel of the tooth, is the enamel the part of the tooth that has any nerve endings or feelings?

A. The enamel, no.

Q. In an enamel cary, in an enamel decay, it's best to work without subjecting the patient to a shock?

A. In my opinion, yes, if it's superficial and only in the enamel then, you know, why take a child through having to feel the pinch.

Q. And, Doctor, what do you do in the case of -- by the way, how do you know whether what appears to be a superficial cary is actually superficial, at the beginning?

A. At the beginning, we would use the explorer or the hook, the mirror, in order to look at the teeth, but what it

is with the explorer is that we are checking the grooves and the pits and we're trying to see if there's what we call tug-back. If it's something that gets stuck for a second and then comes back out, that's usually an initial sign that there's some decay there. Also, you could use the air/water syringe, water gun, as we call it for the kids, but to blow air on the teeth and you see a change of color. The area that's decayed would appear more opaque or more white. Those would be the ways that we would test for those types of things.

Q. Doctor, if you use that tactile method and find what appears to be a merely superficial decay, what happens if you -- in preparing it -- find it to be a little deeper than that?

A. Well, when you're prepping a tooth, you -- after a certain point, especially with children, I tend to use where I count down from 20. I'm going to tickle your tooth until I count down from 20. At that point, I would stop, blow air or have my assistant blow air or water to clear the area and look. If there's any remaining decay, if it appears to be something deeper, then if it's something that I can address with a slow speed or a small spoon excavator, then that's what we use to remove the remaining decay.

Q. What part of the tooth are you talking about when you do this countdown from 20?

A. I'm sorry?

Q. What part of the tooth, the enamel, the pulp --

A. That's initially starting through the enamel. After that would be the dentin. Yes, as you approach the dentin, there could be some sensitivity, so that's why after a certain point you stop and check and see how much decay is remaining.

Q. If any?

A. If any.

Q. And if there is decay remaining, are there techniques that can be used by a dentist in your situation that will minimize or eliminate discomfort?

A. Yes.

Q. Even if the decay dips a bit down into the dentin?

A. Yes. As I said, we have an instrument called a spoon excavator, what we could use to remove soft tissue. We have what we call a slow-speed rotary handpiece that also we could use a large round burr to slowly remove small decay as well. But the one that I would use most likely would be, in most cases, would be a spoon excavator. In an adult tooth, I would tend to more so use the slow speed with the rounder.

Q. Would you just give the jury some understanding of what is a spoon excavator?

A. It is a dental instrument that has a short barrel; it has two angles at the end, and at the very tip, it has a very

small, round -- what would look like a spoon. Some have just the two small sizes; some are small and large on the other end. It has a sharp edge that if placed against decayed enamel or decayed dentin, it will cause the decay to come up with a scooping stroke.

Q. Doctor, I would like to ask you a question about your findings when you do the initial examination on a child, okay? Is there a place on the chart where findings of decay are marked?

A. Yes, on the odontogram.

Q. Odontogram?

A. Yes.

Q. If I hand this to you, would you show the jury where that is?

A. That would be -- I'm sorry. Can you see? That would be this area here. (Indicating)

Q. Now, Doctor, on this odontogram, is it under a topic heading that says --

A. Yes.

Q. -- "work to be done in red pencil, completed work blacked out with black pen"?

A. Yes.

Q. Aside from the work to be done, are you identifying -- tell the jury what you identify there in terms of what you find in the patient's mouth?

A. Well, this is showing the areas of the -- in this case, these would be the adult teeth, the higher numbers. The letters will represent children's teeth. What the circle here represents is the different surfaces of a particular tooth. What we call occlusal is where your teeth come together and what we call a proximal would be these areas here on the sides of the tooth. And depending on whether the tooth is closer to the front or the back, we have in the front what's called facial and in the back it's called buccal.

Q. I'm sorry, what is facial?

A. Facial would be toward your lips on the front tooth. Buccal would be toward your cheek on the back. So that's what these circles would represent here are the teeth and what surfaces that would be writing down, too, so we would know which -- where we saw the decay and what treatment actually needs to be done.

Q. You can sit down, please. Now we're waiting. Go to Page 21, please. Would you blow up the odontogram first? Okay. Can you see that? Dr. Bonds, would you explain what findings were made in terms of decay on tooth A?

A. In tooth A, I found decay on the occlusal surface and on the lingual surface of tooth A.

Q. If it helps, there's a laser pointer. I see that tooth there is divided into five different sections, true?

A. Yes.

Q. And does each of the sections have a particular meaning with reference to the tooth?

A. Well, yes, that's what I was saying. It represents the different surfaces of the teeth. It's how we would talk to each other or to give a representation as to how or where the decay is so you can show the patient.

Q. And, Doctor, it looks like there was initially red there and then it was penciled over in black. What's that all about?

A. Well, once treatment is done, we want to make sure that the person knows that it was already done, so we would use a black pen to cover over to make sure it shows.

Q. So the decay is in red --

A. And the restoration --

Q. The completed work is in black?

A. Yes.

Q. On the tooth next door, there's a symbol and the symbol is the black X. What does the black X mean?

A. That means the tooth was extracted.

Q. And the jury heard a few minutes ago that when you treatment-planned tooth B, you provided for the possibility that it might need a pulpotomy and crown or it might need extraction. Did I say that correctly?

A. Yes.

Q. And the jury can see on tooth B that there's a P written in red above that?

A. Right.

Q. And why is that written in red and not black?

A. Because that was one of the possible treatments that could have been done for that tooth at the time.

Q. All right. And the fact that it's not written over in black, what does that mean?

A. That we didn't do that treatment.

Q. Didn't do the pulpotomy?

A. No.

Q. And the X through the tooth means it was --

A. Means it was extracted.

Q. And on tooth B and tooth I, they both have red Xs written over with a black X. Am I saying that correctly?

A. Yes.

Q. And that means what?

A. That the teeth were extracted instead of having pulpotomies and crowns placed on them.

Q. Now, in how many of Jeremy's teeth did you find decay at the time of your initial examination?

A. At my initial examination, I found decay on eleven teeth.

Q. And you made a treatment plan for eleven teeth?

A. Yes, we did create a treatment plan.

Q. If you count up the number of teeth where at least some decay was found, would -- well, you count and tell me. On how many teeth were at least some amount of decay found? Was that twelve or eleven?

A. Initially, on the initial visit, eleven, and then on a recall visit, we did find decay on another tooth.

Q. Okay.

THE COURT: It's 12:30. We're going to take our lunch break. Be back at 1:30. Don't talk about the case; don't do any independent research.

(Whereupon, the jury was then excused at 12:28 p.m. and a lunch recess was taken)

* * *

THE COURT: Ready?

Mr. STEVENS: Yes, your Honor.

(Whereupon, the jury was brought back into the courtroom)

THE COURT: All right. Ready to proceed?

Mr. STEVENS: Yes.

CONTINUED CROSS-EXAMINATION BY Mr. STEVENS:^ index

Q. Dr. Bonds, good afternoon.

A. Good afternoon.

Q. On the chart from the first day that Jeremy came to the clinic, there's a section on the left that says, "caries"

and "oral hygiene" and "gingiva" and "caries risk assessment." Do you have that on the original chart? Looking at the original chart, is that Exhibit 200 or 199; I can't remember?

A. 200.

Q. And that's in evidence. Would you tell the jury, generally, at what point in the procedure did you make an assessment of those items?

A. These are done at the initial dental evaluation. Their original visit for cleaning.

Q. And who made that assessment?

A. I made the assessment in this case.

Q. And what did you find with respect to, when you examined Jeremy's mouth in respect to caries?

A. I found that he had generalized caries.

Q. Okay. And what does generalized mean?

A. Generalized means he had caries in more than one area of his mouth.

Q. And in terms of oral hygiene, did you make an assessment of that?

A. Yes.

Q. And what was the assessment?

A. His oral hygiene was deemed to be poor.

Q. And in terms of gingiva, does that mean, the gums?

A. Yes. Gingivitis in this case would mean irritation or

inflammation of the gums, and in this case he had localized gingivitis, so that means in particular areas there was some inflammation of the gum tissues.

Q. And, Dr. Bonds, is gingivitis something you would expect to see when there are two abscessed teeth?

A. Yes.

Q. And in terms of caries risk assessment, what was your risk assessment?

A. His caries risk assessment was that he was high-risk.

Q. And would you blow up the odontogram? Dr. Bonds, you've heard the phrase ECC or early childhood caries?

A. Yes.

Q. Did Jeremy have that?

A. By its definition, yes.

Q. And whether or not you wrote the words in the chart, did he have it?

A. Whether or not I wrote it in the chart? Yes.

Q. And how many teeth had decay?

A. At his initial visit, eleven teeth.

Q. I'm writing "generalized caries, high risk of caries, 11 teeth with decay equals ECC." Did I write that correctly?

A. Yes.

Q. Have you had experience with children who had early childhood caries?

A. Yes.

Q. Where?

A. In my training during the portion when I was at Columbia, the E.G.D. program and also when I was working at the Harlem G.P.R., general practice residency.

Q. Now, looking at the odontogram -- I'm sorry, the odontogram, with respect to -- with respect to B and to I, would you tell the jury where those would be in the mouth?

A. Tooth B would be on the upper right and tooth I would be the upper left.

Q. The face that they're upper or lower, does that have anything to do with how difficult or easy it is to install local anesthesia?

A. To me, it's easier to give anesthesia in those areas because you're able to access them more easily and you don't have any structures that are moving, anything of that nature, in order to place the anesthesia.

Q. On tooth B, we mentioned earlier that there's a red P above tooth B?

A. Yes.

Q. And that's something you treatment-plan for?

A. Yes, the possibility of needing a pulpotomy and stainless steel crown.

Q. Would you explain to the jury why it is that there's a different thing done and two different possibilities for that tooth which was then worked on on the very same day?

A. Well, even when we do an examination, there are times, if the patient is not having treatment that day -- it may be more than a week; it may be three months. I'm not exactly sure how long it's going to be, if the parents bring him back --

Q. I'm talking about the treatment -- you extracted tooth B and yet your treatment plan was for the possibility that it might be an extraction or a pulpotomy/crown. Would you explain the reason why on that day there were two possibilities and when the change is to one possibility?

A. Well, on the initial visit, we have to have the examination and at that time, if it is an opportunity that it is something that we could save, we give that option as well. If it's something that needed to be taken care of at that time, then that would be the decision at that time, which would be the appropriate treatment at that time.

Q. And which was the appropriate treatment?

A. The appropriate treatment at that time was extraction.

Q. And did you know that from the very beginning?

A. Not from the very beginning because, as I said, I had to at least examine the patient, see what the situation was as to how we needed to be dealing with it.

Q. Did you do a further examination back in the operatory?

A. Yes.

Q. And would you explain to the jury when a decision is made between the two possibilities?

A. The decision is made between the two possibilities as what is present at that time, what are the options as far as is there enough structure of the tooth to be saved, how much infection is present, the abscess that is present, and those are the things that would make the decision as to whether or not to extract, because once the tooth has reached a point of having abscess, there's usually not much we can do other than to extract.

Q. And can I have Page 22, please? Before we get to the operative report, if we look at a page called the hygiene record, okay, this is for May 23, 2006. Would you blow up the first half, the top half, please? What did you find the oral hygiene to be?

A. The oral hygiene was poor.

Q. And does this indicate that you got a medical history from the patient, the parent?

A. Yes, that's the portion where it says "see notes," or "per parent" is where we're saying that the medical history was provided by the parent.

Q. And although there's a check under diagnosis, is it a fact that there is a diagnosis listed on the operative report, nonrestorable?

A. Yes.

Q. Is that a diagnosis that you made in this case?
A. Yes.
Q. Every tooth that had some work done had a diagnosis in this chart; is that correct?
A. Yes.
Q. Would you scroll down halfway? When Jeremy was there on the first day, you performed an oral examination -- I'm sorry, a complete oral examination?
A. Yes.
Q. And that's why the Y for yes is checked?
A. Yes.
Q. And just generally, would you please tell the jury, how do you perform that oral examination?
A. The complete examination is done on the first visit. That's when we attempt the radiographs, if possible. Also, that is also when we do the examination with the explorer, the mirror, the air/water syringe.
Q. And did you document the results?
A. Yes.
Q. Do you write those yourself or does the assistant put it down?
A. It could be the assistant, or myself.
Q. Those are the red dots that we saw on the odontogram? Were those written by you or by someone else?
A. Those could be written by myself or assistant or

hygienist as well.

Q. Are those written in real-time as you're examining the tooth?

A. Yes.

Q. I see that Jeremy had something called prophy. What's that?

A. Prophylaxis is what we call a cleaning.

Q. And X-rays were taken, correct?

A. Yes, we took two periapical X-rays, which shows the crown of the tooth and tried to show the roots of the tooth.

Q. Can you scroll down a bit? Can you read that to the jury?

A. Patient out of control, protective immobilization used. Consent secured, and the hygienist's signature and my signature.

Q. And although I think it's self-explanatory, the phrase "out of control," when you wrote that -- that's your handwriting or the hygienist?

A. The signature is my writing.

Q. What did the out of control mean?

A. That the patient was uncooperative, would not get in the chair, would not listen, was not able to listen, was not able to maintain himself so that we could perform the examination at the time.

Q. And, Dr. Bonds, the device that was used, the

protective immobilization, is there an identical device in the courtroom today?

A. Yes.

Q. Is this identical to the device that was used with Jeremy Bohn?

A. Yes.

MR. STEVENS: Your Honor, may I -- this is Defendant's ADK1257. (Sic) May I ask that this be circulated?

THE COURT: I don't think it needs to be circulated, but it's not admitted into evidence. So would you like to move it in first?

Mr. STEVENS: I would like to move it into evidence.

THE COURT: Any objection?

Mr. FIRST: No objection.

Mr. HULSLANDER: No objection.

THE COURT: All right. You can just hold it up.

Q. Is this well padded?

A. Yes.

Q. And is this simply a tool to allow you to provide the treatment you believe the patient needs?

A. Yes, to maintain safety, yes.

Q. There was discussion before about risks of using this device. How were you taught to use this device?

A. The way I was always taught, never too tight, never too long, try to make the patient as comfortable as possible, try to accomplish what you can in a short visit.

THE COURT: Just so the record is clear, Exhibit 1252 received.

(Whereupon, Defendant's Exhibit 1252 was received in evidence)

Mr. STEVENS: Thank you.

Q. What sort of attention are you paying to the patient, if any, when the patient is in a device like this?

A. Well, I'm paying full attention because I'm working right within his face. I'm monitoring his breathing; I'm seeing if he's okay, as far as the treatment at the time. Many times crying, things of that nature also helps for us to be able to see into the mouth.

Q. You're almost down the throat, fair statement?

A. Fair statement.

Q. The total time that Jeremy was put in a position of safety in protective stabilization on the first visit when only two teeth were extracted, how long was that?

A. 20 minutes.

Q. And you were able to use -- you chose that it would be appropriate to use lidocaine on that occasion?

A. Yes.

Q. And Jeremy got local anesthesia, had the protective

stabilization and you completed the work, correct?

A. Yes.

Q. On the third visit when you worked on J, K and L, was protective stabilization also used?

A. Yes.

Q. And would you tell the jury for a total of how long was it used on that third and last visit with protective stabilization?

A. Ten minutes.

Q. And aside from that -- by the way, in the hygiene area when you examined Jeremy, after receiving permission to use protective stabilization, can you estimate how long that would have taken?

A. I can estimate 20, 30 minutes tops, because of the hygienist having to actually do the cleaning, my portion of doing the examination, so I would say 20, 30 minutes tops.

Q. And after, you saw Jeremy on visit four?

A. Yes.

Q. And you saw Jeremy on visit five, correct? One, three, four and five?

A. Yes, I believe that was for his recall, his cleaning, return visit for a cleaning.

Q. Is it correct that after that ten -minute use of protective immobilization on Jeremy's third visit, October 23, 2006, there was never another need to use protective

stabilization with Jeremy, and that was the end of his career with that device?

A. Yes.

Q. Okay. When you work with a child like Jeremy and you bring the child to the operatory to do a procedure, do you make any sort of behavior rating of the child?

A. Yes, we have a scale that we utilized on the form, yes.

Q. Could I have Page 27, please? Would you tell the jury something about that scale?

A. Well, it was a scale from one to four, one being considered definitely negative, meaning unable to or refusing to cooperate, overt lack of maturity. A two would be considered negative, which is reluctant, uncooperative, sullen, withdrawn, mental or physical handicap. Three would be considered positive, which is accepting but cautious or anxious. And four was definitely positive; the patient was cooperative, accepting of the treatment.

Q. Jeremy had, out of his ten visits, eight of those visits had operative segments. Can I have Exhibit Page 482? Given those number rating scales, do you recall, Dr. Bonds, that on your next visit with Jeremy, he was also rated the lowest?

Mr. FRANKEL: Your Honor, I don't believe this is in evidence and so I don't think it's appropriate to be

showing the juror --

Mr. STEVENS: It's going to be demonstrative, your Honor, and I have given counsel copies, of course.

THE COURT: But you still shouldn't show it until we're clear that there's no objections to it with the demonstrative exhibits. Do you want to show counsel?

Mr. FRANKEL: May we approach?

THE COURT: Yes.

(Discussion off the record at the bench)

THE COURT: Okay. We're going to show you a chart up here. It's not going to be received into evidence. It's not evidence but it's going to be used demonstratively. There was an objection to use of the chart because it doesn't have -- it's not time-spaced. You'll see -- do you want to put the chart up there?

Mr. STEVENS: 482.

THE COURT: The dates between the first and the second, the amount of space between the number ones and twos and threes -- it's not evenly spaced with the number of days between that, so I'm letting you see this just so that you know that you can see the dates of treatment, what his behavior level was, but the amount of time between each visit is not accurately demonstrated on this exhibit. Okay. Go ahead.

BY MR. STEVENS:

Q. Dr. Bonds, would you please tell the jury, with respect to those four behavior-rating numbers that you read, and assuming that these are correctly and they are correctly, the ratings remain on each of those eight dates over that about two-year period, from May 2006 to March 2008, how did Jeremy's behavior improve as he matured as a child?

A. Yes, it did improve as he matured and at the end became a pretty good patient.

Q. And in terms of -- would you look at the behavior rating which is done on the individual dates and just tell the jury what a one refers to, what a two refers to and what a three refers to?

A. One refers to definitely negative, unable to -- unable or refusing to cooperate, overt lack of maturity.

Number two, negative, reluctant, uncooperative, sullen, withdrawn, mental or physical handicap.

Three, positive, accepting but cautious, anxious.

And four, definitely positive, cooperative and accepting of treatment.

Q. Dr. Bonds, when you worked on Jeremy on this date, October 23, 2006, you didn't use any stabilization devices; isn't that true?

A. No, I did not use the stabilization.

Q. And is that the date that you were referring to when you said, "that would be a win," meaning for Jeremy?

A. Yes.

Q. Could I have Page 27, please? Would you tell the jury generally what is the operative procedure note for the first visit?

A. I'm sorry?

Q. This is the operative procedure note for the first visit?

A. Yes.

Q. This reflects the work you performed on May 23, 2006?

A. Yes.

Q. Would you tell the jury generally what's reflected on this note?

A. Starting from the top, we have the patient's name, date of birth and date of visit. We weighed the patient at that time. We reviewed the medical history; we reviewed the treatment plan and X-rays and consents were signed and in the chart. His behavior was deemed to be a one. The initials for myself and the assistant were there.

Q. Can I stop you there? You told the jury consents were signed and in the chart?

A. Yes.

Q. Can you tell the jury what kind you're talking about?

A. One for the protective immobilization and the other for surgical extraction.

Q. Why do you want the consent of the parent?

A. We have to have consents first of all because we can't just go and put a child in immobilization, and also just so that the parent understands the complications that could happen from an extraction and also a bit of post-op instruction as well.

Q. And, Doctor, is this a blow-up of the two consents that you're talking about? I'm putting up on the easel Defendant's ABK-1253A. Are these the two consents that you talked about, the surgical informed consent and the writing for the consent for protective immobilization?

A. Yes.

Q. Would you tell the jury how you speak to a parent in a situation like this to explain what has to be done, what is the role of the paper and what is the role of your discussion?

A. Well, for the protective immobilization, we first write down the reasons why we were using it, and in this case --

Q. If you want to approach, you may.

A. The first check there is, under: "I understand the reason my child needs immobilization is the following:" I checked "that he or she requires immediate diagnosis and/or limited treatment and cannot cooperate due to lack of maturity," and I also checked the third one, "Either my child and/or the dentist and staff would be at risk without the

protective use of immobilization."

Q. Did you believe that to be true?

A. Yes.

Q. Did you believe it was in Jeremy's best interests to have the treatment on that day?

A. Yes.

Q. Continue, please.

A. This next portion is: "I understand the benefits of this procedure are, one, reduction or elimination of untimely movement; two, protection of the child and dental staff from injury and, three, facilitate the delivery of quality dental treatment."

Q. Did you believe those things to be true?

A. Yes.

Q. Did you ask Ms. Varano if she understood those?

A. Yes.

Q. Is it your habit to ask for any questions that the parent might have?

A. Yes.

Q. Why were all of these things initialed by the parent?

A. Well, it's not something that we had to do, but in my case, I always like to dot every I and cross every T, if I could, so to make sure she understood, I asked if you read this and understand, could you place your initials at each of the checks that we're discussing.

Q. And where would -- typically where would a conversation like this take place?

A. This could happen -- this conversation could be had in the consultation room; it could also be in the operatory as well, or it could have been in the quiet room.

Q. Do you have any recollection of what you learned from Ms. Varano as to whether she came from far away or near, whether she was driver, whether she had to get a ride -- any recollection of what occurred directly between the two of you?

A. I can't recall exactly what was said but after reading through the chart --

Q. No, I'm just asking if you recall? You don't?

A. No.

Q. The surgical informed consent, what is your role in that, why is it signed and what do you tell a patient -- a parent, a guardian, about these issues that may arise during operative procedures?

A. Well, it's to make sure that the patient, or in this case the parent of the patient, understands that this is the treatment that we're going to do; we need to extract these teeth; the reasons why were explained, and in this case, it explains the type of anesthesia and it also gives the possibility of risks, post-operative, as well.

Q. And, Doctor, you used lidocaine on this date?

A. Yes.

Q. And what risks -- what are the key risks that are listed there, or the potential, of lidocaine?

A. It says: "I also understand that the administration of medications in performance of surgery carry certain common inherent risks, such as, but not limited to: Drug reactions and side effects; post-operative bleeding; post-operative infection or bone inflammation; possible involvement of the sinus of the upper jaw during removal of upper teeth, requiring possible surgery for repair at a future date; possible involvement of the nerve within the lower jaw during removal of lower teeth, resulting in usually temporary but possibly permanent numbness and/or tingling in the lower lip and tongue, right and/or left sides; possible fractures of the lower jaw during the procedure; bruising and/or vein inflammation at the site of the intravenous injections and possible damage to an adjacent tooth or teeth.

Q. Dr. Bonds, what are these risks of, the medication or the surgical procedure?

A. Of the surgical procedure.

Q. And that's the extraction?

A. Yes.

Q. And why do you explain this to the patient, to the parent?

A. Well, that's what is proper to do for any extraction,

whether it's the child or the adult, that you have consent for extractions.

Q. Now, can you scroll down, please? On the same operative procedure, the report on that date says that local anesthesia was used, correct?

A. Yes.

Q. And can we just scroll down... I'm sorry, up a tiny bit. Up, please. That's it. Right there. Does it indicate that immobilization was used?

A. Yes.

Q. After receiving the approval of the parent?

A. Yes.

Q. And how long was the patient in immobilization for those two extractions?

A. 22 minutes.

Q. And why are there the -- what are these next three lines, immobilization verification?

A. That's the moment that we're checking that the patient is breathing, that there's circulation to the hands and feet and that he's properly placed into the immobilization.

Q. Doctor, do you recall when Mr. Frankel asked you a question, he said that all these things are done to prevent a catastrophic result. Have you ever seen a catastrophic result from the way you apply the device?

A. Not in the fashion I use it, no.

Q. Do you believe a catastrophic result is even possible the way you use the device?

A. Not from my experience.

Q. The outcome of immobilization: Marks, bruising and complications. Did you make a noted record as to how Jeremy came out of the --

A. Yes, that's where we wrote no marks or bruises.

Q. What did you tell the parent regarding the use of immobilization in terms of how it will affect the child?

A. We try to use it as being --

Mr. FRANKEL: May I object? He has no recollection of his discussion with Ms. Varano. What he may tell other patients is irrelevant.

THE COURT: Sustained.

Q. Do you have a practice that you tell with respect to all patients who need immobilization in terms of what risks you tell them about immobilization?

A. Yes, and what I would say is that the possibility of having marks or bruises and that your child may cry because he doesn't like it.

Q. Could we see -- could you scroll down, please, and widen out a little bit? Could we have this portion, please? Great. Doctor, for tooth B, what is the procedure?

A. The procedure is extraction.

Q. What's the diagnosis?

A. The N.R. represents nonrestorative.
Q. The I procedure?
A. Extraction as well.
Q. And last, the diagnosis?
A. Nonrestorable.
Q. The 2 PA, what's that?
A. Those were the two X-rays we took to attempt to see the teeth.
Q. And the PA means what?
A. Periapical. That's where you have probably had to bite down on the bottom and it kinds of irritates you, but it shows the crown of the tooth as well as the roots of the tooth.
Q. Dr. Bonds, if a child is out of control, do you want to subject the child to further X-rays, further radiation if you don't feel you'll get a better result next time?
A. No, that's why we used the vision and also the tactile, as I discussed earlier.
Q. Page 28. After this visit, did there come a time when you received a telephone call -- well, in any event, did you make a note about a phone call with Ms. Varano?
A. Yes.
Q. And would you tell the jury what happened then?
A. It was a post-operative call and the patient, what I wrote is, "Patient's mother called to confirm the fact her

son needed to continue taking his script for penicillin. The patient was in no pain. I advised her to finish the script and she was dismissed in satisfactory condition."

Q. Is that a good thing?

A. Yes, that's follow-up and making sure that the patient -- parent or patient knows that he or she should finish their antibiotic after treatment.

Q. Do you have an opinion, Doctor, as to whether at the time of the extraction there was some degree of infection still within the tooth?

A. Yes. The --

Mr. FRANKEL: Excuse me. Lack of foundation. Objection, lack of foundation.

THE COURT: Okay. So it was just whether he had an opinion, so the answer is yes. That's not improper. Next question.

Q. And for an abscessed tooth being extracted, what is your opinion as to whether infection exists despite a continuing course of antibiotic?

A. Well, the extraction is to remove the source of the infection and the script is there to remove the infection once the source is gone. We really have to finish a prescription in order to ensure that all the infection is gone.

Q. Could you go to page 21, please? Getting back to the

initial document, Doctor, when Jeremy came in, did he have any pre-existing dental work at all?

A. No, he did not.

Q. Did he have any missing teeth at the time of the first visit initially?

A. No, he did not.

Q. Is there a place in the chart where you would note or mark pre-existing dental work or missing teeth?

A. Yes, we would write those things in the "existing conditions" areas of the odontogram, the upper portion.

Q. Is that the part I'm pointing to here?

A. Yes.

Q. And, Dr. Bonds, what part of the -- what part of the -- where do you put the current findings where decays or caries are found?

A. On the lower portion, same odontogram but the lower portion.

Q. And are those caries marked in red or in black?

A. The caries would be marked in red.

Q. Is that a single purpose or kind of dual purpose thing?

A. I'm not quite understanding --

Q. Tell the jury what the red marks mean; that's all.

A. The red marks mean -- they showed where the decay is and also it shows what treatment we would try to attempt to

save those teeth.

Q. Could I have Page 23, please? Doctor, would you identify the document up on the screen?

A. Yes, that's the treatment plan authorization form, May 23rd, 2006.

Q. And would you tell the jury generally what goes on there?

A. Well, this is a form that we used in order to have a listing of the teeth that we've diagnosed that needed treatment, what type of treatment could be done. It also asks about appointment options. It asks about does the parent have a problem with using either the stainless steel crowns or what we call NuSmiles, which are stainless steel crowns that have the white facing on the front teeth, and also it has that we may need to use local anesthesia or nitrous oxide.

Q. And if you could blow up the top box on the right-hand... What's the significance of getting the parent's initials in the top box there?

A. Well, it just -- it just makes sure that they acknowledge that they or the patient needed more than one appointment to have the treatment done.

Q. Okay. Could you scroll down to the next box, please? What's the significance of that box, stainless steel crowns and white crowns?

A. This is giving us approval that we could utilize those in the treatment. There are some parents that did not like having the stainless steel crowns on the kids' teeth, and we purposely used the NuSmiles as opposed to just the regular anterior front teeth as being stainless steel crowns as well.

Q. When you say NuSmiles crowns, what's the difference between that and the regular stainless steel crown?

A. The NuSmile is a stainless steel crown that's made for the front teeth, but, however, it does have a, what we call a facing that is two-colored, that is white.

Q. So instead of having a silver tooth in front, you'd have a white tooth in front?

A. Yes.

Q. And why would you use -- by the way, stainless steel crowns on the primary teeth, what does the American Academy of Pediatric Dentists say about using stainless steel crowns on children that have early childhood caries?

Mr. FRANKEL: Object. First, it calls for hearsay and, secondly, no foundation.

Q. What's the benefit to a young patient like Jeremy who has early childhood caries? What's the benefit of using the stainless steel crown?

A. Well, the stainless steel crown, after removing the decay and if necessary the pulp chamber, the nerve tissue, then what it does is it creates a cover for the tooth, the

remaining tooth structure, which also allows for the spacing, the natural spacing to continue as it should. As the patient grows older, especially in the back teeth, around six years old, you get your six-year molar, but as you get older, you have other teeth that are growing under the baby teeth, so it's very important to maintain that space for the other adult teeth to come in naturally. This way, you're avoiding appliances and things such as orthodontics or braces in the future.

Q. On that first visit, had you already treatment-planned the possible need for a crown on one of the four front upper teeth?

A. Yes, I did.

Q. Which tooth was that?

A. That would be tooth D, D as in dog.

Q. Could I have 114, please? Could you optimize those a little bit? Doctor, on the right-hand side, you'll see your treatment plan; is that correct?

A. Yes.

Q. And on the left-hand side, it's just written out in more clearer type face?

A. Yes.

Q. Would you show the jury where it was, the new treatment plan for one of the four upper teeth, and you can actually get up and use this as you like, tell them which

tooth and what you planned for?

A. That would be tooth D on this line and D, NuSmile crown.

Q. And you pointed out that the other three front teeth at a later date had an additional proposed treatment added into the plan, correct?

A. Yes.

Q. And are those the things that are listed in red, NuSmile and pulpotomy?

A. Yes.

Q. And E, F and G, are those the rest of the front four, the uppers?

A. Yes.

Q. And when you treated the child on the third visit, did you learn that those four front uppers had NuSmile crowns?

A. Yes.

Q. What is the purpose of the pulpotomy? Why is it done?

A. If the decay has gone through the enamel and also the dentin and approached the pulp tissues, that's what causes pain, and if unaddressed, after awhile it does create a situation for infection and possibly of abscess. So in order to alleviate that -- if it's what we call a multi-surface cavity, the mortar on one side of the tooth has a lot of decay, and while we're cleaning or it's already into the pulp, what we do is remove the portion of the pulp that's

inside the crown, remove that, place a medicine inside which helps to mummify the tissues of the roots or basically kill them off and replace a built-up material inside the tooth, and then we would place the crown over top of that. This allows for natural absorption of the roots as the new teeth come in. And hopefully -- the plan is for the tooth to remain in place until it's time for it to naturally come out.

Q. And the stainless steel crown?

A. The stainless steel crown itself is to give full coverage for a tooth that has more than one surface of decay

Q. Dr. Bonds, I have written, "Pulpotomy, protect the inside; stainless steel crown to protect the outside"?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And if something less than -- for children with early childhood caries, how typical is it to see the front four uppers involved?

A. Well --

Mr. FRANKEL: There's no foundation that he's an expert on early childhood caries, your Honor. I would object, lack of foundation.

THE COURT: I'm going to sustain as to the form of the question.

Mr. STEVENS: Sure.

Q. In your experience, Dr. Bonds, when you treat children with generalized caries, children who have multiple decay in all parts of their mouth, is it common or uncommon to find involvement of the upper four front?

A. Yes, I'm pretty sure some of you have heard the phrase bottle-rot caries. It would be something that people would talk about. What happens is in a young child when they have sugars in their mouth or not cleaning properly, the natural --

Mr. HIGGINS: I'm going to object, based on the prior rulings.

Mr. FRANKEL: I think that it violates certain court orders, your Honor, this line of questioning.

THE COURT: Would counselors approach?

(Discussion off the record at the bench)

THE COURT: Sustained.

Q. Dr. Bonds, have I correctly stated the rules you live by when it comes to protective stabilization?

A. Yes.

Q. In terms of Jeremy's four upper front teeth, when you return to your -- when you first saw Jeremy in May of 2006, did you note there to be decay on all four of those front teeth?

A. Yes.

Q. And what recommended treatment for each of those four

front teeth did you recommend?

A. For tooth number D, I put a NuSmile crown. For tooth number E, which is in between the teeth, and facial, means on the front of the tooth, I put a filling could be done. On tooth F, which is another front tooth, same thing, in the middle, in between, and the front of the teeth, and for tooth G, I put just for the front, the facial of the tooth.

Q. And both E and F, are those problems which cause multi-surface decay?

A. Yes.

Q. And F had a single surface?

A. I'm sorry?

Q. F had a single surface?

A. Tooth G had a single surface, yes.

Q. Would it be the duty and the obligation of the next dentist who treats those teeth -- you didn't treat the teeth on the next visit; is that correct?

A. Yes.

Q. Would it be the duty and obligation of the dentist on the next visit to do an independent exam, not just follow your proposed treatment-plan slavishly?

A. Yes, that's what we expected, yes.

Q. Keeping in mind that the next visit is about three months later, why would it be important for the next dentist to do his own investigation?

A. The amount of decay could have changed, depending on home care and things of that nature, so once they returned, there could have been more decay.

Q. What was the date of your next visit with Jeremy Bohn?

A. With me it was October 11th, 2006.

Q. Could we have 837, please? Could you tell the jury what happened on that date?

A. On this day, we did three silver amalgam fillings.

Q. You may blow up the top part, please. Did you rate Jeremy's behavior on that day?

A. Yes.

Q. What was his rating?

A. It was a one.

Q. Is that the lowest or worst?

A. That is the lowest, yes.

Q. Now, you've been asked questions about recommending options, including treatment; there's not an emergency going on. Do you recall those questions?

A. Yes.

Q. What would be the benefit to Jeremy of having those three teeth restored on that day?

A. The benefit would be the removal of decay and stabilizing the teeth so that there's no -- so with good home care, there will be no further need to have any other work done on these teeth.

Q. Is there any -- is that goal made more significant or less significant or otherwise by the fact that Jeremy is a child who has ECC?

A. I would say it would be more significant.

Q. Is it something you'd discuss with a parent when you run into a situation like this?

A. Yes, we tend to try to talk to the parents about, you know, home care and the intake of sweets and sodas and things of that nature, yes.

Q. Is treatment to Jeremy, given his oral condition, in your view, not important, important, or otherwise?

A. Say that one more time.

Q. Did you feel it was important to treat Jeremy -- for Jeremy to continue to get treatment?

A. Yes, I did.

Q. And can you generally tell the jury why?

A. Well, because of the amount of decay he had at that age, it was best to try to get as much -- as many of these restorations taken care of to prevent him from having another future situation, as far as having an abscess or other teeth extracted.

Q. And would you talk to the parents --

Mr. FRANKEL: Objection to that. What he would do is speculative.

THE COURT: Sustained.

Q. On every occasion when you have any course of treatment, are there options that you give to a parent under these circumstances?

A. Yes, but in a difficult case, yes, we would be able to give the options, once again.

Mr. FRANKEL: He's still just speculating.

Mr. STEVENS: Absolutely not, your Honor.

THE COURT: I think there's really no time frame, foundation, so I'm going to sustain the objection because it is somewhat speculative without a foundation.

Q. Did you have a habit with respect to advice to give a parent under these circumstances with a child like Jeremy at this point in time?

A. Yes, that they should monitor the sweets; they should definitely help them with the home care, as far as the brushing and flossing, and that they should return for treatment in order to prevent any future problems or with respect to pain or abscess.

Q. And Doctor, with respect to whether Jeremy should have the care today as opposed to another time as far as any other options for treatment, would you tell the jury what is your habit with respect to what you'd tell the parents in a situation like this, at this point in time for a child like Jeremy?

Mr. FRANKEL: Objection --

THE COURT: Sustained as to form.

Mr. FRANKEL: Lack of foundation.

THE COURT: It's a legal objection. Thank you.

Mr. STEVENS: We'll get there.

Q. In a situation like this where you have a child with this decay that you're proposing treatment for, under the circumstances that Jeremy presented with, did you have a constant habit of what options you would give to the parent before you do the work and before you use protective stabilization to determine whether to do it at all?

A. Yes.

Q. What is that advice?

A. Well, in a case where a child has had some difficulties before, we definitely want to keep the visits short. We also would give the option, once again, of referral. We would give the option of if he's not having a good day we could reschedule, or if he wanted to wait and watch it, that's another option.

Q. Now, in terms of the teeth J, K and L, could you tell the jury where in the mouth are those three teeth?

A. J would be the tooth furthest to the back on the top left, the furthest back as far as a baby tooth, and K and L would be the teeth that are furthest from the back on the lower left side of the baby teeth.

Q. And, Doctor, if -- you mentioned earlier the ability

of the physician to use techniques to minimize or eliminate discomfort to the patient should you have to go down into the dentin; do you recall your testimony?

A. Yes.

Q. Now, if a tooth with tooth decay is in the lower half of the jaw, the lower part, what is the significance in terms of how you weigh the benefits or dangers or decision-making properties vis-a-vis an injection of local?

A. Well, first, I would use the explorer, the mirror, the air/water syringe to determine if there is decay there. If it's something that I initially deem to be shallow or something that I could tackle without using a local anesthesia, then I would begin to prep the tooth. At a certain point, I would stop, evaluate the prep, see how much decay is left. At that point, if it's closer to the dentin, if it's something a little deeper, I would make a determination at that time, if it's something that I could use a spoon or the slow speed. But with children more so the spoon and with adults more so the slow-speed. If it was something that was deemed to be too deep, then we would have the option of using the anesthesia, temporalizing and trying again another day.

Q. And if anesthesia, local anesthesia, is used in the lower jaw, what is the technique and what particular risks for a child whose behavior is one, exists in that respect, if

any?

A. Well, the area that we would place the anesthesia is, I guess if you could take your tongue and stick it as far back as you could to the corner of your mouth, there's an angle of the jaw here that we're using our fingers to feel for; there is the lingual nerve, the lingual artery, the lingual vein, the inferior alveolar nerve, artery and vein. You have some physical spaces that are also there. In order to place anesthesia, you would have to go through these structures in order to get the tip of the syringe as close as possible to the actual jaw itself, what we call -- is you feel the touch of the bone and then you back away. You aspirate, which means you draw back on it to make sure you're not in a vessel, and then you would slowly, over a minute or so, give anesthesia. On a child who's moving his head, there's the risk of the needle breaking, which is -- that would be a catastrophe because it would be very difficult to find and to remove. The tongue could get cut; the lip could get cut; the face could get cut. Basically, if the child is not sitting still, they would be put at risk.

Q. What about those nerves and vessels?

A. Well, you definitely would not want to inject into a vessel because that would cause some serious complications, and you wouldn't want to do any type of nerve damage where you could get numbing or a tingling sensation that would

linger afterwards.

Q. Is that particular danger that occurs, that exists when a child is either out of control or poorly controlled, is that something you weigh in the mix for the benefit of the child?

A. Yes.

Mr. STEVENS: Thank you, Dr. Bonds. Hold on one second, please. May I have one moment?

THE COURT: Yes.

Q. Doctor, do you have the original chart in front of you?

A. Yes.

Q. And would you take the cover of that chart? There's patient information from the parent?

A. Yes.

Q. And would you just sort of hold it up and show it to the jury? Is that something that in this case Kelly Varano and Charles Bohn's names are written there and the signature there for parent/guardian, Kelly Varano?

A. Yes.

Q. And would you show the jury on that original chart what's on the other side of that same page? And may I ask you, the habit at the Small Smiles was for the parent or guardian to fill in that page himself; it's not written by anyone else, correct?

A. Yes.

Q. And is there information on the back of the page, Dentistry Patient Management Techniques?

A. Yes.

Q. And does that describe for the parents the techniques used, including tell-show-do, positive reinforcement, voice control and other techniques?

A. Yes.

Q. Doctor, does it state, "all efforts will be made to obtain the cooperation of child dental patients by the use of warmth, friendliness, persuasion, humor, charm, gentleness, kindness, and understanding?

A. Yes.

Mr. STEVENS: Your Honor, may I circulate that document to the jury, please?

THE COURT: Not right now. We're going to take our -- are you done with this witness?

Mr. STEVENS: No, I'm not.

THE COURT: How much longer do you have with this witness?

Mr. STEVENS: A little more, perhaps ten minutes.

THE COURT: Okay. I'll let you continue.

Q. Doctor, would you turn to your second visit with Jeremy, which was his third visit to Small Smiles? May I

have 837, please? Doctor, do you recall being asked some questions by Mr. Frankel about the use of the protective stabilization for that ten-minute period on Jeremy's third visit?

A. Yes.

Q. Okay. Now, Doctor, you mentioned that there are, at the beginning of the period, there's a listing of heart rate?

A. Yes.

Q. And at the end there's a listing, correct?

A. Yes.

Q. Is there anything in between?

A. On this form, no.

Q. What does this mean when it says "pre" and "post"?

A. That means pre-immobilization and post-immobilization.

Q. And the 204?

A. That was --

Q. Applies to what?

A. The heart rate pre-immobilization.

Q. Doctor, you actually -- when Jeremy's heart rate was a 204, would it be your habit to -- what would be your habit when you find a patient who's either out of control or in difficult control and needs to be stabilized, has parental consent to be stabilized; you put him in the papoose and you find the heart rate to be 204; what do you do next?

MR. FRANKEL: I'm going to object. Lack of

foundation. I don't know how many cases he has where it's 204 and he has a habit of how he does it.

THE COURT: Again, I'll tell you what I told everybody else. We don't do speaking objections in my court, so your object is lack of foundation?

Mr. FRANKEL: Yes, ma'am.

THE COURT: Sustained.

Q. Doctor, when a child's heart rate is greater than 170, do you have a habit in terms of what you do under those circumstances for a child who is to be in protective stabilization?

A. Yes.

Q. What is your habit?

A. Normally, we try to give the child some time to calm down a bit before we start the treatment.

Q. And why is that?

A. Because we really don't want the heart rate that high and we really don't want to put the child at risk; we just want to make sure we're treating the child safely.

Mr. STEVENS: Thank you.

THE COURT: Okay. Let's take our afternoon recess. Fifteen minutes.

Can I see counsel, please?

(Whereupon, the jury was then excused from the courtroom)

(Whereupon, a recess was taken at 2:51 p.m.)

(Whereupon, proceedings after recess at 3:08 p.m.)

THE COURT: Ready to proceed, Mr. Frankel?

Mr. FRANKEL: Yes, your Honor.

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

REDIRECT EXAMINATION BY Mr. FRANKEL:

Q. Dr. Bonds, you were asked some questions about policy regarding the use of the papoose board, "keep it short," as Mr. Stevens wrote up on his chart. Do you remember those?

A. Yes.

Q. Did you as a dentist at Small Smiles receive from the company copies of the A.A.P.D. guidelines on protective stabilization?

Mr. STEVENS: Objection, scope.

THE COURT: Overruled.

A. Say again, please.

Q. Did you receive, as a dentist who worked at Small Smiles, from the company copies of the A.A.P.D. guidelines on behavior management?

A. Yes.

Q. Dr. Bonds, let me hand you what's been marked Exhibit 349. Can you confirm for the ladies and gentlemen of the jury that's your signature on that document?

A. Yes.

Q. And that's a guideline receipt acknowledgement that you're acknowledging in August of 2006 that you received the guidelines on behavior guidance for pediatric dental patients; is that true?

A. Yes.

MR. FRANKEL: We offer Exhibit 349, your Honor.

THE COURT: Any objections?

Mr. FIRST: No objection.

Mr. STEVENS: No objection.

THE COURT: Exhibit 349 received.

(Whereupon, Plaintiff's Exhibit 349 was received in evidence)

Q. Did you familiarize yourself with the behavior guide -- with the guideline on behavior guidance for pediatric dental patients?

A. I guess I did read them, yes.

Q. And you knew what risks were contained in those documents, in the guidelines and what they disclosed as to risks of protective stabilization?

A. Not that I can remember.

Q. You don't remember that; is that what you're saying?

A. Not that I can remember at this moment.

Q. I asked you in your deposition a lot of questions about that. After I did that, did you go back and look at

the guidelines to see what the guidelines said about the risk of protective stabilization?

A. I may have.

Q. You recall that the A.A.P.D. guidelines back in 2006 or 2005 talked about the risk of physical and psychological harm?

A. I remember that being discussed since I've been here, yes.

Q. Yes, sir. And you, in fact, have repeatedly disclosed to your patients that those are risks associated with restraining a child, correct?

A. No. What I said was that -- what I said was that there was a risk of bruising and there was a risk of marks.

Q. Have you ever in writing told a patient that there is -- same language as the guidelines, that there is a risk of physical and psychological trauma from restraining -- or putting a child in a papoose board?

A. Not that I can remember.

Q. Okay.

Mr. FRANKEL: May I approach, your Honor?

THE COURT: Yes.

Q. Dr. Bonds, let me show you what has been marked as Plaintiff's Exhibit 350 and ask if that's your signature on the bottom of that page?

A. Yes.

Q. And this is a consent for protective stabilization that you presented to one of your patients, isn't it, Dr. Bonds?

A. Yes.

Mr. FRANKEL: We would move into evidence Plaintiff's Exhibit 350 -- we're offering into evidence.

Mr. McPHILLIAMY: Objection, relevance.

Mr. FIRST: Objection. May we approach?

THE COURT: Yes.

(Discussion off the record at the bench)

BY MR. FRANKEL:

Q. Dr. Bonds, you have Plaintiff's Exhibit 350? That's your signature at the bottom, correct?

A. Yes.

Q. Did you tell your -- this patient who's on this form that the use of protective stabilization has the potential to produce serious consequences, such as physical or psychological harm, loss of dignity, violation of a patient's rights and even death? Did you tell your patient that in writing?

Mr. McPHILLIAMY: Objection, relevance.

Mr. FIRST: Object.

Mr. STEVENS: Objection to form.

THE COURT: Okay. I'm going to overrule the objections.

A. No, I did not in writing. This is not my writing. This is the form. I did not write the form.

Q. Did you sign the form?

A. Yes, I signed it.

Q. Approving it, approving the statements?

A. I signed the form, yes.

Q. Okay. I sense a reluctance. Is it true, sir, that you didn't really want to sign the form, but this is a form that FORBA makes their dentists use?

A. Well, this was the form that we used at this time. This is 2009 and yes, I did sign it.

Q. You didn't agree with it then and you didn't agree with it when it said no risk, right?

Mr. McPHILLIAMY: Objection, argumentative.

THE COURT: Overruled.

A. That's not what I said.

Q. You're saying this is a company form that you signed even though you didn't agree with it; is that true?

A. That's not what I'm saying. I said yes, I did sign this form, and yes, this is the form that we use for consent at this time. It is a different form.

Q. Sir, I'm asking about the substance of the form. Do you agree with it or not?

Mr. FIRST: Objection.

THE COURT: Sustained.

Q. Do you believe that there are risks, psychological and -- risk of psychological and physical harm from putting a child in a papoose board?

Mr. McPHILLIAMY: Objection.

THE COURT: Overruled.

A. Do I?

Q. Yes, sir.

A. No.

Q. But you signed the form anyway, right, because it's a company form and that's what you tell the patients?

A. I signed the form because it's the consent for protective stabilization.

Q. You testified that you worked under the close wings of Dr. Turner and Dr. Randazzo; was that correct?

A. As an assistant, yes, I did assist them.

Q. That is before you were a dentist, you were getting training from these two lead dentists, right?

A. More like mentoring, but yes.

Q. Mentoring. They were showing you how to do things, right?

A. Yes.

Q. And as a result of that mentoring, when you got your license, they said, "well, you don't need to go to Pueblo; you've already gotten the company training while you were working as a dental assistant," right?

A. Yes.

Q. Dr. Randazzo was the lead here in Syracuse from around August of 2005 until Dr. Khan took over in March of 2006, about the time you started as a dentist; do you remember that?

A. I'm not sure about the dates, but yes.

Q. Does that sound about right to you?

A. It sounds about right.

Q. Dr. Randazzo -- let me ask you this: Were you present when Dr. Randazzo kept urging the doctors to do as many procedures per patient as they could?

Mr. STEVENS: Objection, beyond scope.

A. Could you repeat it again?

Q. Could we see Exhibit 97? Dr. Bonds, I know you've been in the courtroom and I'm sure you recall this e-mail where Dr. Randazzo was telling Mr. Roumph that she keeps urging the doctors to do as much as they can on each patient. Were you present when she was doing that?

A. I'm not exactly sure.

Q. You remember that -- did you remember hearing her talk to doctors about trying to do as much as they could on each patient?

A. Not that I can recall.

Q. She was your mentor, though?

A. She was the lead dentist there, yes.

Q. Yes, sir. And could we see Exhibit Number 46, please?
A. Remember, Dr. Randazzo was also the lead dentist who advised Dr. Aman that he needed to improve his production by doing more procedures on each patient?
Mr. McPHILLIAMY: Objection, scope.
THE COURT: Sustained.
Q. Did Dr. Randazzo mentor you in the same techniques she was using as the lead dentist?
A. I can't say what she did for the others, but I can say as an assistant, I did sit across from her and I did learn quite a lot from her.
Q. Now, Dr. Turner, let's change to him. Did you say that Dr. Turner, one of his strengths was he was good at talking to kids, avoiding putting them in restraints or protective stabilization, that that was one of the things he was good at?
Mr. FIRST: Objection, mischaracterized the testimony.
THE COURT: Overruled.
A. Yes, he was very good at talking with the kids.
Q. Relaxing them and relieving anxiety, those kinds of things, right?
A. Yes, very grandfatherly. His nickname again was the Kid Whisperer.
Q. Was what?

A. The Kid Whisperer.

Q. What happened to the Kid Whisperer at FORBA; do you remember? They fired him, didn't they?

A. I'm not sure of that portion, but he was no longer with us. Dr. Janine did become the lead dentist.

Q. And you've heard the testimony they fired him, gave him 90 days' notice, right?

A. Yes.

Q. The top of the chart is -- says, "existing conditions," right?

A. Yes.

Q. Conditions of the teeth, correct?

A. Yes.

Q. The bottom part of the chart says "work to be done" in red pencil, right?

A. Yes.

Q. And is it true, sir, that this work to be done matches the treatment plan that you filled out? It's a picture, pictorial representation of your treatment plan?

A. Yes.

Q. And then as you do the treatment plan, or someone does the treatment plan, they write Xs or Ps or whatever to show that the work is done, and they do that in black ink, right?

A. Correct.

Q. So this was not something you're filling out as you're

looking at the patient because you don't know what work is to be done until you're done with your examination, do you?

A. Well, as we're doing examinations, we are calling out which teeth we're seeing the decay on and that's what is written down.

Q. And that's what goes on your treatment plan, right?

A. That's what goes on the odontogram as well.

Q. They just match up, the treatment plan and odontogram, right?

A. They are one --

Q. It's really just one document, it's the same document in different form, right, with then on top of it an indication of when the treatment is actually done or if it's done?

A. Yes.

Q. Mr. Stevens showed you that chart which showed the different behavior numbers for Jeremy over time; do you remember that one that Judge Karalunas gave certain instructions about?

A. Yes.

Q. If you had just waited a few days from October 11th when you put Jeremy in a papoose board to fill three teeth that were so small you say that he didn't even need local anesthesia to another two weeks, his behavior was improved to the point where you didn't need a papoose board, right?

Mr. STEVENS: Objection as to form.

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

Q. If you had deferred treatment, you could have avoided all the stress and problems associated with putting a three-year-old in a papoose board; is that true, Dr. Bonds?

A. Not necessarily.

Q. Did I hear you to say that children at three and four tend to get more cooperative as they mature and get a little bit older and that's a key time period, the three to four years of age?

A. Yes, over that year.

Q. Okay. So that if you're able to wait a little bit, the probability is that the child's behavior is going to improve, on average?

A. I would say that's a general -- in general?

Q. Yes, sir.

A. Yes, but also the cavities will continue as well.

Q. Okay. Talking about teeth D, E, F and G, the front four teeth, you treatment-planned for three fillings and one crown, right?

A. Yes, one NuSmile.

Q. And you did not think you were endangering Jeremy by waiting three or four months to do that work, did you?

A. No, not endangering him.

Q. If you thought that his condition was going to rapidly

progress and he was going to need pulps and crowns and a lot more stuff, you would have done the work immediately, not waited and told him to come back in four months -- three-and-a-half months, would you?

A. Depending on his behavior at the time, depending on the amount of decay that was actually there visibly on the front teeth.

Q. Not much, was it?

A. It was enough that he needed a crown.

Q. That was your opinion as to one of the teeth, right?

A. And the other teeth --

Q. But he didn't need the crown for at least three months?

Mr. STEVENS: Can he let the witness finish his answer before he talks over him?

Q. My apologies.

A. He definitely needed a crown for one of the teeth. He had cavities in between on the front of the other two teeth. There were cavities to the point where one needs a crown. Then it tends, after an amount of time, if not addressed, yes, they would need crowns and possibly pulpotomies.

Q. You didn't address them, right?

A. Excuse me?

Q. You told him to come back in three months, right?

A. I didn't address them at the first visit, no, I did

not.

Q. Or any time after. It was okay to wait three months?

Mr. STEVENS: Objection.

Q. Okay. You said reading at the back of that sheet that Small Smiles told all parents that they were going to use warmth and humor and be friendly, all those nice words, right?

A. Yes, it says all efforts would be made to obtain the cooperation of the child.

Q. We've spent the better part of today talking about those efforts. Do you believe from what you reviewed in the record and what we've talked about that Small Smiles and you, as the dentist treating Jeremy, used all best efforts, warmth, friendliness, humor, before you put him in a restraint three times?

A. Yes.

Mr. FRANKEL: That's all I have. Thank you, your Honor.

THE COURT: All right.

Mr. HIGGINS: Your Honor, Plaintiffs would -- oh, I'm sorry.

THE COURT: Let's see if anybody has any more questions.

Mr. FIRST: I just have a few.

RECROSS-EXAMINATION BY MR. FIRST:

Q. Doctor, I'm going to just have you take a look at this odontogram; is that what they're called?

A. Odontogram, yes.

Q. Referring to the odontogram here, I noticed that there are red portions of -- there are teeth, portions of the teeth colored red; is that correct?

A. Yes.

Q. What does that mean?

A. That represents the decay that we found at examination.

Q. Okay. So if I understand you correctly, you're actually documenting -- you either did it or an assistant did it or a hygienist did it, at your direction -- the specific areas of the tooth that were found to be decayed?

A. Yes.

Q. Okay. And you also write on there the treatment plan?

A. Yes.

Q. And as I understand it from your earlier testimony, D, E, F, and G are those four top front teeth?

A. Yes.

Q. And all four of them had various portions of the tooth shaded red; is that correct?

A. Yes.

Q. And the two teeth that were extracted were B and I?

A. Yes.

Q. Okay. Was there any significance to the fact that those teeth were involved in what you observed in Jeremy, to you as a dentist?

A. As far as B and I?

Q. B and I, that combination of teeth, did that have significance to you as a dentist?

A. Well, yes, because we want to address what would be considered the most important things at the time. If a patient has infection, we want to address that and get rid of the source as soon as possible.

Q. Is that a pattern that you see on any regular basis, those particular teeth being involved?

A. B and I?

Q. B, I, together with D, E, F and G?

A. We consider rapid caries.

Q. I'm sorry, what's the --

A. We consider rapid caries. That's the phrase I would use.

Q. That's a form of ECC?

A. By the definition of what ECC is, yes.

THE COURT: Mr. McPhilliamy?

RECROSS-EXAMINATION BY MR. McPHILLIAMY:

Q. Doctor, counsel just asked you about a line on the inside folder of the chart. "All efforts will be made to

obtain the cooperation of child dental patients by the use of warmth, friendliness, persuasion, humor, charm, gentleness, kindness and understanding;" do you see that?

A. Yes, sir.

Q. Is there a title to that page?

A. Dentistry patient management techniques.

Q. Okay. Now, flipping around to the front side where the patient history is, do you see a place where you signed on the very bottom?

A. Yes.

Q. A place where Kelly Varano signed?

A. Yes.

Q. And there's a paragraph there?

A. Yes.

Q. The last sentence in that paragraph, does it say: "I have also read and understand the pediatric dentistry patient management techniques on Page 2 of this form and give my consent for their use"?

A. Yes, it does.

Q. Okay. Now, you were asked about the October 10, 2006 visit, and then you were asked a question about, "Well, if you would have waited two weeks, his behavior would have improved, on the 10/23 visit;" is that correct? You were asked questions about that?

A. Yes, I was.

Q. When you saw him on October 11th, did you have a crystal ball or something to look into the future to say: "Hey, if I wait two weeks, Jeremy's behavior will be better"?

A. No, I did not.

MR. McPHILLIAMY: No further questions.

THE COURT: Mr. Stevens?

Mr. STEVENS: No, your Honor.

THE COURT: You may step down.

(Whereupon, the witness was then excused)

THE COURT: Next witness?

Mr. HACKERMAN: Your Honor, the plaintiffs would call Dr. Kenneth Knott.

Dr. KENNETH KNOTT, having been called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HACKERMAN:

Q. Dr. Knott, you've also had your deposition taken in this case?

A. Yes.

Q. And I have a copy of it that I want to hand to you, and feel free to use it however you wish as we go along, okay? If you want to put something, a question I ask in context, you'll have the whole thing, all right?

A. Yes.

Mr. HACKERMAN: May I approach, your Honor?

THE COURT: You may.

Q. Now, Dr. Knott, you were a senior officer at both Old FORBA and New FORBA; is that right?

A. Correct.

Q. You were a regional director for Old FORBA?

A. Yes.

Q. And you were a regional director for New FORBA?

A. Yes.

Q. So at the time of the sale, you just continued on as a regional director, right?

A. Yes.

Q. And at the time that you were a regional director for New FORBA, the clinics that you had responsibility for included the Syracuse clinic; is that true?

A. For a period of time, yes, that's true.

Q. And that period of time would have been from the -- September 27th, the day after the sale, to what, late October of 2007?

A. That sounds pretty close, yes.

Q. September 27th, 2006 --

A. Right.

Q. -- through late October 2007?

A. A little over a year.

Q. So a little bit over a year, okay. Before the sale, while you were a senior officer of Old FORBA, who was your

boss?

A. Dan DeRose.

Q. And after the sale -- Dan DeRose, he was a FORBA person, right?

A. Correct.

Q. He was one of the owners of FORBA, right?

A. Yes.

Q. Okay. And after the sale, who was your boss?

A. I reported directly to Al Smith.

Q. And Al Smith was the president of New FORBA; is that right?

A. Correct, C.E.O.

Q. C.E.O. and president, right?

A. Yes.

Q. Now, as a senior officer of Old FORBA, you were one of the most highly compensated employees of Old FORBA; isn't that true?

A. I really have no idea.

Q. Well, other than the owners of Old FORBA, isn't it true that your compensation, you had the third highest compensation in the company, and the only two that had higher compensation were the other two regional directors; do you remember that?

A. I know they made more than I did, but I have no other information other than that. Those figures came to my

attention as the sale was going through, but as I was working with Old FORBA, I had my salary and I did not have privy to anyone else's salary.

Q. Well, let me make sure I understand. You say that information came to your attention around the time of the sale?

A. Right.

Q. The information I've been asking you about?

A. Right.

Q. And that is whether you were the third or fourth most highly compensated officer at Old FORBA, and you learned at that time that you were; isn't that true?

A. Yes.

Q. And the same was true as to New FORBA; you were one of the three or four most highly compensated officers in New FORBA as well; is that true?

A. I would say yes, just based on the information that was brought out at the deposition I gave December 10th.

Q. Well, you know that your compensation for New FORBA was higher even than the president's; do you remember that?

A. At the time you took my deposition, that's when I learned that. I had no idea until that point in time what the compensation was for any one of the New FORBA owners or executives.

Q. Okay. So you do know that? Your testimony is you

just didn't know it back at the time?

A. Correct.

Q. Now, you are a dentist?

A. I am.

Q. But you are not a pediatric dentist?

A. Correct.

Q. You didn't attend a residency program?

A. No, I did not.

Q. You're a general dentist?

A. I am.

Q. And you began with FORBA in December of 2002; is that right?

A. Yes.

Q. And you began as a lead dentist in the FORBA Tucson clinic; is that correct?

A. That's correct.

Q. And at that time, who was your boss?

A. Dan DeRose.

Q. Okay. So as a lead dentist in a FORBA clinic, your boss was Dan DeRose?

A. Yes.

Q. And I think you became a regional director in around August of 2005; is that accurate?

A. Close. It was probably early summer when I started limited duties.

Q. So earlier than August?
A. Just a few months earlier.
Q. Okay. Now, the sale of the company occurred in September of 2006, right, of the FORBA company?
A. Yes.
Q. Where we transit from the Old FORBA group to the New FORBA group, right?
A. True.
Q. And you had -- by that time, you had been with Old FORBA for about three or three-and-a-half years, right?
A. Since January of '03.
Q. And the business had grown?
A. Very busy center.
Q. And it had -- Old FORBA by the time of the sale had about 50 clinics; is that right?
A. That sounds roughly correct, um-hmm.
Q. Now, the New FORBA buying group, the group that bought Old FORBA, they didn't have any dentists in that group, did they?
A. Not to my knowledge.
Q. So when this transition occurred, the same dentists who had been in Old FORBA one day before the sale, the next day the same dentists were New FORBA, right?
A. Yes.
Q. And so, for example, Dr. Bonds and Dr. Aman and Dr.

Khan, they had all been with Old FORBA, to your knowledge? Do you know that?

A. Yes.

Q. And then they just moved over and became a part of the New FORBA organization?

A. Correct.

Q. So whatever training they had from Old FORBA, whatever systems were in place, whatever model there had been, it all just transferred from Old FORBA to New FORBA, didn't it?

A. Yes.

Q. And that included the regional directors, true?

A. True.

Q. Before the sale, the regional directors were you, Dr. Sean Barnwell, and Dr. Robert Andrus, right?

A. I'm not sure that Dr. Andrus assumed a regional role until he stepped out of the Pueblo center. He was mostly a clinician at that point, but he soon became -- and took over western region that I had been mentoring prior to the sale.

Q. Okay. We'll talk about Dr. Andrus in just a second. Let's get two out of three first. You and Dr. Barnwell had been regionals, right, for Old FORBA?

A. Yes.

Q. And you both transferred over to New FORBA?

A. That's true.

Q. I'm going to show you what's in evidence as

Plaintiff's Exhibit Number 94. Now, you said that you didn't think that Dr. Andrus was regional before the sale. You see Plaintiff's Exhibit Number 94 at the bottom there, the original message at the bottom, that's to you, to Dr. Barnwell and to a Bob Andrus, right?

A. Correct.

Q. And that's from Michael Roumph. Do you know Mr. Roumph?

A. I do.

Q. And he was in charge of production for Old FORBA, wasn't he?

A. Well, he had various tasks. I'm not sure there was a label, but he did a lot of work communicating with centers and helped the regionals and he was very active.

Q. And this is entitled, "Production E-Mail," and it says: "Excellent job this week on production e-mails. Let's keep the pressure on and make a difference," right?

A. Yes.

Q. You received these e-mails frequently, these production e-mails?

A. Yes.

Q. And can you tell us why this one would have gone to the three people that are identified? Those are the regionals, aren't they?

A. I think my point earlier was just that Bob had been a

very strong clinician and worked pretty much full time in the Pueblo clinic and yes, he was -- he was, I think, stepping into a regional position, but he did not have a regional assignment at that time of the sale. He assumed the region that I had prior to the sale, and I came out to the northeast area as a result of the sale. That's the point I was trying to make.

Q. Let's take a look at Page 238 of your deposition, if you would, please. Are you with me there?

A. 238?

Q. Yes, sir. Line 5, you can see we're talking about Plaintiff's Exhibit 94, right?

A. Right.

Q. And the question at Line 7, the e-mail at the bottom of the page, there to you, Dr. Barnwell and Dr. Andrus there on June 23rd, 2006; do you see that? And your answer was correct?

A. Right.

Q. And the question was: "Those were the three; you were the three regionals at the time, right?" And what was your answer?

A. It was correct or yes.

Q. "Yes, that's true," was your answer?

A. And we're just talking about probably a week or two in terms of the transition. That's the only point I was trying

to make. I wasn't trying to change my answer. Dr. Andrus became a regional, but he didn't really become the north or the west regional until I stepped away from it and took on the northeast regional position, so yes, he was one of three regionals in a matter of weeks once we got through the transition from Old FORBA to New FORBA.

Q. Well, the question I asked you in your deposition is whether he was regional on June 23rd, 2006, and your answer was yes; is that true?

A. That's true.

Q. Was that true? Is that testimony true?

A. I'm not sure that maybe it wasn't in error just based on the fact that we hadn't transitioned to New FORBA yet, but he certainly became a very strong, active regional very, very soon into New FORBA.

Q. Let me show you Plaintiff's Exhibit 24, if I might. May I approach, your Honor?

THE COURT: Yes, and you don't need to ask.

Q. Let me hand you 24, Dr. Knott. Did you receive Plaintiff's Exhibit 24? You can see it's an e-mail to a number of people, including you, if you look right there in the middle?

A. Yes.

Q. Let me see if I can find you up here. This went to a lot of people, didn't it? There we go, right there. So you

got this, right?

A. Yes.

Q. And Rich Lane, he was a FORBA guy, wasn't he?

A. Yes.

Q. And he sent it around, the contact list that shows what each person in the organization, what their responsibility was, right? Is that right?

A. I'm looking at contents. I'm still going through -- yes.

Q. Did you say yes to my question?

A. I did, yes.

Q. If we look over -- and that went to all the lead dentists in all the clinics and all the office managers, right?

A. Correct.

Q. And let's look over and see what he says about Dr. Andrus. You see on the page that says Colorado office contacts; have you got that?

A. Yes.

Q. And by the way, let's go back to that first page. This is December 23rd, 2005, isn't it?

A. Right.

Q. So that's long before the New FORBA transaction occurred, right?

A. That's true, yes.

Q. And if we look over on that page that I referred you to, it shows that Dr. Andrus was a regional director --

A. Right.

Q. -- for old FORBA, right?

A. Correct.

Q. So they were the same regional directors for Old FORBA and New FORBA, weren't they?

A. Correct.

Q. And in addition, so we've got the same dentists, we've got the same regional directors, we've got the same dentist, new dentist training program as well, don't we?

A. As far as -- yeah, as far as I recall, that's true.

Q. As it relates to -- I popped into that question a little quick. I wanted to transition over to the new dentist training program. You're familiar with the FORBA new dentist training program?

A. Yes.

Q. And so when the sale occurred, the program that was in place for Old FORBA, the new dentist training program, that same program became the new dentist training program for New FORBA; isn't that right?

A. Yes.

Q. And your job as a regional director was fundamentally the same for Old FORBA and for New FORBA, wasn't it?

A. Yes.

Q. Your intent and your goals as a regional did not change from the time when you were a regional for Old FORBA to the time when you were a regional for New FORBA, true?

A. True.

Q. Fundamentally, the way that transaction worked, the way that sale worked is in September of 2006, we had a -- we had an up-and-running business, and one day that business was Old FORBA and the next day that same business was New FORBA, right?

A. Yes.

Q. Okay. Now, I want to talk with you just a minute about dentist employment matters. First of all -- and what I'd like to do is cover about three or four areas -- It won't take too long -- and see what was going on in these areas in the Old FORBA time frame and what was going on in the New FORBA time frame, okay? First of all, in the Old FORBA time frame, FORBA hired the dentists; isn't that true?

A. Yes.

Q. And in the -- they decided who the dentists would be, for the FORBA clinics, Old FORBA did?

A. Yes.

Q. And the same was true for New FORBA. New FORBA also hired the dentists; isn't that true?

A. I had a lot more responsibility in that area with New FORBA.

Q. Well, you were an officer of New FORBA?
A. Right.
Q. So FORBA hired the dentists, New FORBA hired the dentists?
A. Yes.
Q. New FORBA decided who the dentists in the clinics would be?
A. Correct.
Q. Correct?
A. Yes.
Q. In the old FORBA days, Old FORBA set the salaries for the dentists, did they not?
A. Correct.
Q. And in the New FORBA days, New FORBA set the salaries for the dentists?
A. Yes.
Q. And the Old FORBA days, as to increases, salary increases for dentists, Old FORBA set the salary increases for the dentists; isn't that true?
A. Yes.
Q. And the same for New FORBA. New FORBA set the salary increases for the dentists as well?
A. Yes.
Q. And in the Old FORBA days, Old FORBA fired the dentists; isn't that true?

A. Yes.

Q. And the same was true in the New FORBA days. It was the New FORBA -- New FORBA also fired the dentists?

A. Yes.

Q. So in both the Old FORBA and the New FORBA days, the FORBAs had control over the employment matters relating to the dentists, true?

A. Yes.

THE COURT: Okay. It's 4 o'clock. I think this is a good breaking point for the day.

Mr. HACKERMAN: Yes, your Honor.

THE COURT: All right. Tomorrow morning, 9 o'clock. Don't talk about the case; don't do any independent research. Have a great night.

(Whereupon, the jury was then excused)

(Whereupon, the proceedings were adjourned at 3:59 p.m.)

* * *

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 26, 2013

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