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 27, 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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INDEX

Exhibit No.	Description	Marked For Identification	Received in Evidence
9			365
348			388
12			465
10			471
46			482
162			487
25			499
510			507
63			519
66			522
67			539
1002			587
771			590

INDEX

Exhibit No.	Description	Marked For Identification	Received in Evidence
772	Papoose board	613	
58			616
514			616
8			616
103			616
24			616
31			616
35			616
511			616
530			616
94			626
95			626
96			626
97			626
98			626
1037			632
44			637
59			642
390			646
514			650
37			657
68			669

101A	671
69	679
101B	684
101C	685
101D	692
101E	695
480	703
76	705
7A	707
88	711
91	714
477	718
101G	726
101F	732
386	773
48	811
59	814
153	819
158	822
160	824
161	826
163	828
164	830
166	831
169	834

172	837
170	842
199	900
200	911
1252	999
349	1032
515	1090
45	1092
398	1104
152	1110
70	1120
683	1126

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WITNESSES:

* * *

(September 27, 2013, Judge Karalunas, trial continuation)

THE COURT: Good morning. Before I bring the jury in, I do want to just thank all counsel for their preparedness in helping keep this trial moving. I know at times I've been cranky over the last few weeks. It's a lot of material to absorb, but you guys are making it easy, and I just want to let you know that.

Thank you.

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

THE COURT: Good morning.

JURY MEMBERS: Good morning.

THE COURT: Are you guys ready?

JURY MEMBERS: Yes.

THE COURT: All right.

Mr. HACKERMAN: May I proceed, your Honor?

THE COURT: Yes, you may.

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

CONTINUED DIRECT EXAMINATION BY Mr. HACKERMAN:

Q. Good morning, Dr. Knott.

A. Good morning.
Q. How are you?
A. Good.
Q. Was it your understanding, Doctor, that the law prohibited FORBA from owning the Syracuse clinic?
A. Yes.
Q. You knew that during the Old FORBA days and you knew it during the New FORBA days?
A. That's correct.
Q. In the Old FORBA days, prior to the sale, FORBA represented to the State of New York that Dr. Padula was the owner of the Syracuse clinic, correct?
A. Yes.
Q. And when new FORBA took over the business in September of 2006, FORBA represented to the State of New York that you were an owner of the Syracuse clinic, correct?
A. I believe that's correct, yes.
Q. And also represented that Dr. Andrus was an owner, correct?
A. Correct.
Q. FORBA made it appear during the New FORBA time frame, made it appear that you and Dr. Andrus were the owners of the Syracuse clinic, but behind the scenes, FORBA was really the owner; isn't that true?
A. Bob and I -- Dr. Andrus and I -- were the owners of

that clinic. We had a 50 percent share.

Q. That's what I was going to ask you. First of all, how much of the Syracuse clinic do you say you were an owner of?

A. 50 percent.

Q. And you say that Dr. Andrus was the owner of the other 50 percent?

A. Correct.

Q. How much did you pay for your 50 percent interest in the Syracuse clinic?

A. Don't know the exact figure, but it was a nominal amount.

Q. A nominal amount. It was five bucks, wasn't it?

A. Five or ten, something in that range, true.

Q. How much did Dr. Andrus pay for his 50 percent interest?

A. I think the same amount, but I'm not sure.

Q. Five bucks. It was five bucks, wasn't it?

A. I don't recall, but it was, like I said, it was a nominal amount.

Q. If you would take a look at Page 63 of your deposition, Dr. Knott. Are you there?

A. I'm here.

Q. Do you see the question at Line 22, "And so it was $5, what you paid for your interest, your 50 percent interest?" Do you see that question?

A. Yes.
Q. And what was your answer?
A. Yes.
Q. So it was $5, wasn't it?
A. Yes.
Q. Five bucks, correct?
A. $5.00.
Q. Who decided your purchase price for your 50 percent interest in the Syracuse clinic would be five bucks?
A. I really don't know.
Q. You don't know?
A. I don't know who decided that.
Q. How did the purchase price come to be $5?
A. I do not know.
Q. So you say you were the owner, but you don't know how the purchase price got set or who set it; is that right?
A. That's correct.
Q. Who decided that you would be an owner of the Syracuse clinic?
A. It was made by a collaboration between Old FORBA and New FORBA.
Q. So they told you you were going to be an owner?
A. As -- yes. I was agreeable to become owner of the Syracuse clinic, 50 percent.
Q. And they told you that they were going to designate

you as the owner of the Syracuse clinic as part of your job as a FORBA officer; is that right?

A. And as an owner.

Q. Who decided that you'd be the 50 percent owner?

A. Again, I think that was a decision was made between Old FORBA and New FORBA.

Q. Who got the profit from the Syracuse clinic while you were holding yourself out to the State of New York as being the owner?

Mr. HULSLANDER: Objection, Judge. He's not -- he was the owner. Objection to the form of the question.

THE COURT: Overruled.

A. Say it again, please.

Q. Who got the profit while you were representing to the State of New York that you were the owner?

A. The Syracuse clinic, as well as many other clinics, had an agreement with FORBA that they would provide certain services, management, H.R., et cetera. They were basically the operating arm of the clinic, and for that they received a profit.

Q. They received all the profit, didn't they?

A. Most -- yes, I think that's true.

Q. You didn't receive any profit as an owner in the Syracuse clinic, did you?

A. I did not.

Q. You had no right to receive any profit in the Syracuse clinic, did you?

A. Not to my knowledge.

Q. So you say you were a 50 percent owner, but you had no right to receive any profit?

A. That's what I said, yes.

Q. Who decided that all of the profit from the Syracuse clinic was going to go to FORBA?

A. The owners of FORBA.

Q. The owners of FORBA?

A. Um-hmm.

Q. Who was that?

A. That was Mike Lindley and Al Smith and Rodney Cawood.

Q. So it was FORBA that decided that all the profit from the Syracuse clinic, when you say you were the owner, was --

A. That's the way it was set up, yes.

Q. You couldn't sell your 50 percent interest in the Syracuse clinic for any profit either, could you?

A. No, I don't believe I could.

Q. And the reason was that FORBA imposed an agreement on you which said that if you -- that the only time you could sell your interest in the Syracuse clinic was to somebody designated by FORBA, right?

A. That's correct.

Q. And then only for another of these nominal amounts?

A. That was -- yes, that was my understanding.

Q. So you couldn't make any profit selling the clinic, right?

A. Correct.

Q. And if you did sell it, it had to be to somebody that FORBA designated?

A. Correct.

Q. So just to button that down, you couldn't make any profit from the operations of the clinic as it was going along; you couldn't sell the clinic and make any profit; you couldn't make any profit out of your ownership of the Syracuse clinic at all, could you?

Mr. HULSLANDER: Objection, asked and answered.

THE COURT: Sustained.

Q. FORBA, in fact, could fire you as the owner of the Syracuse clinic, couldn't they?

A. They certainly could fire me as an employee.

Q. And if they -- they could fire you as an employee for any reason at all, couldn't they?

A. I always assumed that, yes.

Q. And if they -- under these agreements that they imposed on you as regards the Syracuse clinic, if they fired you as an employee of FORBA, then they could require you to transfer your interests to somebody else designated by FORBA, couldn't they?

A. Correct.

Q. And again, that transfer would be essentially no money, right?

A. Correct.

Q. So effectively, if they decided to fire you as an employee, they were firing you as the owner of the Syracuse clinic?

A. Essentially, yes.

Q. I'm sorry?

A. Essentially, yes.

Q. Wouldn't you say, Dr. Knott, that the real owner of the clinic is the one that does the firing, not the one that gets fired?

A. I was the owner, half owner of the clinic and, you know, the arrangement that I signed I went into when I made it and I knew if I quit my job or if I was terminated then the ownership would be transferred out of my name into another practicing dentist or another licensed dentist in the State of New York.

Q. Well, my question to you -- I appreciate that answer, but my question was: The real owner of a dental clinic is the one that does the firing, not the one that gets fired; wouldn't you say?

A. In this situation, no.

Q. Who is Dr. William Nash?

A. I only know the name.
Q. You don't know Dr. Dr. Nash, do you?
A. Never met him.
Q. Never met him, never talked to him?
A. No, I have never.
Q. Let me show you Plaintiff's Exhibit 348. Dr. Knott, you see this is dated September 26th of 2006, having to do with the Syracuse clinic; do you see that?
A. Yes.
Q. And if we scroll down a little bit, you'll see that William Nash, D.D.S., Dr. William Nash, was the president of the Syracuse clinic?
A. I see that.
Q. Was Dr. Nash the president of the Syracuse clinic when you were the owner?
A. I'm not sure that he was, but I don't recall.
Q. You don't know who the president was --
A. No.
Q. -- while you were the owner? At the time you say you were the owner, you don't know who the president was?
A. That's what I said, yes.
Q. And if the evidence shows it was Dr. Nash, the guy who was president of the clinic you say you owned, you never met?
A. That's an honest answer. I've never met him.
Q. You never communicated with him?

A. To my recollection, I did not.

Q. Doctor, you obtained your license to practice dentistry in New York shortly before you began representing to the State of New York that you were the owner of the Syracuse clinic; is that right?

A. I'm not sure what came first but somewhere in that time frame I obtained a license in New York.

Q. In other words, you weren't already licensed to practice in the State of New York prior to the time this all occurred?

A. I believe I was.

Q. You got the license for the specific purpose of being able to represent to the State that you owned the clinic in Syracuse and the other clinics in New York; isn't that right?

A. Yes.

Q. You never practiced dentistry in the Syracuse clinic, did you?

A. No, I did not.

Q. In fact, you never practiced dentistry in any of the New York clinics?

A. I did not.

Q. You never practiced dentistry in New York anywhere, ever?

A. That's correct.

Q. You became -- or you held yourself out to be the owner

in all -- either a partial owner or a new owner in all of the FORBA clinics, did you not?

A. Are you referring to across the country or just in New York? I'm sorry.

Q. Across the country.

A. No, I was not owner in several of the clinics.

Q. How many were you an owner in, did you represent you were an owner in?

A. I don't know. I don't remember the exact figure. Many.

Q. Almost all of them?

A. Almost all -- southeast was not an area that I was licensed in.

Q. And there were more than 50 clinics, weren't there?

A. Yes.

Q. You represented that you were an owner in close to 50 clinics to the states -- you represented to the states, the various states, that you were an owner in close to 50 clinics, didn't you?

A. Yes.

Q. And at each instance, it was under the same circumstances that we've just gone over regarding the Syracuse clinic, wasn't it?

A. Yes, I believe it was.

Q. You made essentially no investment in any of those

clinics?

A. That's true.

Q. You couldn't get any profit; it all went to FORBA, right?

A. Correct.

Q. And you couldn't sell it for any profit, right?

A. Correct.

Q. Now, there's been a good bit of testimony in the trial, Dr. Knott, about the new dentist training that FORBA conducted, and I'm not going to get into that in any detail with you, but I have a little bit I want to ask you about. You, in fact, took the new dentist training out in Colorado, didn't you?

A. I did, um-hmm.

Q. In Aurora, the Aurora clinic?

A. Correct.

Q. And your trainer was Dr. Mueller?

A. Yes, he was.

Q. That new dentist training included training as to treatment planning?

A. Correct.

Q. And that included training as to when to do specific dental procedures, didn't it?

A. Not specifically, but it certainly included the whole range of the typical restorative efforts in children's

mouths. It was a very pointed overview of, I think, Dr. Mueller's experience in pediatric dentistry, and quite honestly, as an older practitioner that had had lots of experience in many phases of dentistry, I welcomed his input. I learned a great deal from him in that three-week period of time. It was excellent.

Q. I appreciate that answer. I want to make sure that I understood the answer you gave to my question. Did the training on treatment planning in the new dentist training program include when to do specific procedures?

A. No, it was more about how to do various procedures. When you come out of dental school, if you're not a pediatric trained dentist, your exposure to treating children is very limited. And most dentists, including myself, are timid about certain procedures, and there seems to be this aura about if you cap a tooth, it's a big deal. And you soon learn after you've seen kids and treating kids, it's a very excellent restoration and is the preferred restoration. I treatment-plan about 40 kids every day that I see kids in my office, and I work in a pediatric practice, and my job is to treatment-plan. And the preferred restoration for these kids that are four, five and six years old that have cavities in their teeth is a stainless steel crown, and I have that discussion with parents all the time.

Q. Dr. Knott, if you don't mind, I don't mean to

interrupt, but it seems we've gotten away from the question; how does it feel to you? The question I asked and I think you answered right at the beginning of all of that was during that -- during that training by Dr. Mueller in the Aurora clinic as to treatment-planning, whether that training included when to do specific procedures? And your answer, I think, the beginning of that last answer, was no; is that right?

A. I think there were a lot of discussions about guidelines, based on behavior, age of the patient, maturity of the patient, their willingness to cooperate as to how to treat and how to manage and what type of treatment is in the child's best interests.

Q. Let's look at Page 85 of your deposition. Do you see the question at 84 -- take a look at 84, right at the bottom of the page, Line 22. "So treatment planning was part of the dentist training, the new dentist training; was it not?" And your answer was: "Sure."

Mr. FIRST: I'm going to object; you misread that.

Q. Well, let me get it right. "So treatment planning was part of the dentist training, the New FORBA dentist training, was it not?" And you said, "Sure," right?

A. Correct.

Q. And that was the same for Old FORBA, too, wasn't it?

A. Well, that's true.

Q. And then on the next page, Line 7, the question was: "Now, treatment planning includes when to do specific procedures, does it not?" Do you see the question?

A. I do.

Q. And your answer was what?

A. Was yes.

Q. So that treatment planning that you received from Dr. Mueller included when to do specific procedures, didn't it?

A. Based on many factors, yes.

Q. And the treatment planning for the new dentist training for the -- that FORBA does, New FORBA does, provided the basis of the treatment in the FORBA clinics, didn't it?

A. It covered probably 90 percent of the range of treatment that's typically given to, provided to young children. Yes.

Q. So the answer to my question is yes; that new dentist training provided the basis for the treatment at the FORBA clinics, right?

A. A good overview, yes.

Q. And I think you've indicated that the training was the same during the Old FORBA days as the New FORBA days?

A. Essentially, with progressive changes, improvements, better facilities, overhead projection, hands-on experience with materials, there were a lot of positive changes that

came about when New FORBA came onboard as the owners.

Q. In the spring of 2007, New FORBA formed a dental advisory board, right?

A. I'm not sure of the exact timing but, yes, they did form a dental advisory board.

Q. So there was a new dental advisory board that New FORBA put together?

A. Correct.

Q. And it had -- the members of the dental advisory board were four pediatric dentists; do you recall that?

A. Four or five, yes.

Q. And these pediatric -- that was more pediatric dentists on the FORBA advisory board than there were in all the FORBA clinics; isn't that true?

A. I couldn't state that yes or no. I don't know.

Q. In any event, you know all the ones on the advisory board were pediatric dentists?

A. They were.

Q. And these were highly credentialed gentlemen, were they not?

A. Yes, they were. Yes, they are.

Q. Sorry?

A. They are.

Q. They are.

A. They still are.

Q. Yes. It included a couple of past presidents of the A.A.P.D.?

A. Yes.

Q. And the New FORBA dental advisory board recommended to FORBA that FORBA change its policy with regard to the use of restraints, didn't it?

A. They did.

Q. And the new advisory board, the dental advisory board, New FORBA dental advisory board, recommended that FORBA change its policy to having restraints being used only during emergencies; isn't that true?

A. I believe that is a correct statement.

Q. Do you recall that that recommendation from the dental advisory board to New FORBA was made in December of 2007?

A. I don't recall the exact date of that, no; I don't.

Q. You do recall, though, that FORBA did not change its policy --

Mr. HULSLANDER: I'm going to object.

Q. -- with regards to when to use restraints, did it?

THE COURT: Wait a second. Legal basis?

Mr. HULSLANDER: Irrelevant.

THE COURT: Overruled.

A. Well, they -- they made steady improvements in terms of monitoring the kids when the papoose was used, changed the clinical forms so that there were areas for charting and

rules of checking vitals and releasing the arm and the leg wraps to make sure there was good, positive circulation, checking pulse-ox and heart rate every 15 minutes. So I think there were significant changes after interaction with the advisory board.

Q. But my question is whether one of those significant changes was to change to what the dental advisory board recommended, and that -- as to the fundamental of when to use restraints, and they said use them only in emergencies, and you didn't change; did you?

Mr. HULSLANDER: Objection, Judge. Asked and answered.

THE COURT: Overruled.

A. We continued to use the papoose in situations where we felt it was warranted.

Q. Much more extensive circumstances than just emergencies; isn't that true?

A. Probably, yes, that's true.

Q. That's how it always was, from the time you walked in the door at Old FORBA, to the time you walked out the door?

Mr. HULSLANDER: Objection.

THE COURT: Overruled.

Q. You used those restraints at FORBA whether there was an emergency or not, and that's what you taught the dentists to do; isn't that true?

A. Bottom line is, the dentists knew they had the discretion to use or not use the papoose to their best discretion in terms of managing the child and trying to treat them effectively.

Q. My question is: What did you teach them to do?

A. We taught them how to use it safely, and it was up to the doctors to decide when to use it or not to use it, always -- I always coached the doctors, "Interact with the child, find out what their level of maturity is, their willingness and ability to cooperate; show-tell-do; play with the child, find out if there's any possibilities of treating, and then interact with the parent as to whether they agree or disagree with the use of the restraint if that's the only way to treat them."

Q. And you also told them based on training you got from Dr. Mueller that it's okay to use restraints whether there's an emergency or not, didn't you, sir?

A. If it was warranted in their professional opinion, we taught them how to do it safely.

Q. You did not teach them that they should not use restraints except in an emergency, did you?

A. I did not do that because that's not in -- that was not in my purview. They have a license to practice dentistry, and we try to make sure that their baseline of understanding on how to treat children was at a certain

level, and part of that training was to use that papoose, if necessary, and use it safely.

Q. Let me show you Plaintiff's Exhibit 132. Dr. Knott, this is an e-mail that you have from Mr. Lindley. He was the C.E.O. of New FORBA, right?

A. That's correct.

Q. Chief executive officer, top dog, head man, right?

A. Yes.

Q. And did you receive this e-mail?

A. Yes, I did.

Mr. HACKERMAN: Your Honor, we would offer Plaintiff's Exhibit 132.

THE COURT: Any objection?

Mr. HULSLANDER: Objection, irrelevant.

Mr. FIRST: I object. It's irrelevant. May we approach?

Mr. STEVENS: No position.

THE COURT: Sure.

(Whereupon, a discussion was held at the bench)

THE COURT: All right. I'm going to sustain the objection with respect to Exhibit 132, and also I'm going to strike some of the testimony that you heard. You heard about some changes that were made in -- or recommended changes that were made in December of 2007, and I'm

striking that testimony because Jeremy was not papoosed after December 28th, 2007. So you must disregard that testimony.

BY Mr. HACKERMAN:

Q. Dr. Knott, you understood during all the time that you were working for FORBA that it was unlawful for FORBA to influence the dentists in their treatment decisions?

A. That's correct.

Q. And in fact, during all the time that you worked for FORBA, both Old FORBA and New FORBA, FORBA did influence the dentists in their treatment decisions, didn't they?

A. I don't believe that's true at all. I think they influenced their level of productivity in terms of work ethic. That's what my job was primarily. I spent most of my time encouraging doctors to get the work done on these kids so they didn't end up with abscesses and emergency situations requiring hospitalization or the use of maybe a papoose wrap.

Q. FORBA had a treatment philosophy it expected its dentists to follow, didn't it?

A. It did not. It had a business model. They supported the clinics. Part of that support was me coming in and trying to mentor the doctors to help them understand and help them get out of their fear of treating some of these little kids and, amazingly, many of them learned very quickly and

were very capable practitioners and saw many small children and treated them effectively.

Q. Would you take a look at Page 90 of your deposition, please? Are you there?

A. I'm here.

Q. You just testified that FORBA did not have a treatment philosophy that it expected its dentists to follow, right?

A. That's correct.

Q. At Line 19, the question was: "Now, Dr. Knott, FORBA had a treatment philosophy it taught its dentists and expected them to follow; isn't that true?" And what was your answer?

A. I think I said yes, and I disagree with my answer to that question because thinking through and reading through this there were many questions I would have answered differently today than I did in this deposition, not because I wasn't telling the truth, but sometimes you just don't think through the answers, and this is one of them. And I'm telling you that I have friendships with many doctors across the country, and I took the data that was given to me about budget and I had to bring that into clinical terms in terms of, "Look, there's plenty of dentistry to be done. We never have shortages of dentistry to be done. Just do your best to get it done effectively and safely for the kids and get them out of trouble, and here's how I did it all the years I did

it" and shared that philosophy with them.

THE COURT: Doctor, Mr. Hackerman is asking questions. I want you to answer the questions that are posed to you and not answer other questions.

THE WITNESS: All right.

THE COURT: Okay?

THE WITNESS: Yes.

THE COURT: Continue.

Q. This deposition where we just went over this testimony that you say is untrue, you signed and swore that it was true, didn't you?

A. I did.

Q. Well, let me ask you this question, Dr. Knott: Did you talk to somebody after you gave that testimony?

A. No, I received a copy of it and I read through it and I thought to myself there were more than one area that I hemmed and hawed and didn't come and really express how I felt, and the reality of what happened throughout the weeks and the months and the years that I was in the regional position, that I had many, many interactions daily and spent many, many hours on the telephone mentoring and trying to help the doctors, answering questions, and really trying to be interactive with them, so...

Q. Are you done?

A. Yeah, I'm done.

Q. After you did all that, and read it, you signed it, didn't you?

A. I did.

Q. And swore to it?

A. I did.

Q. The truth is, Dr. Knott, that if the dentists, if the FORBA dentists did not follow the FORBA treatment philosophy, they were shown the door; isn't that true?

A. I don't believe that's true at all.

Q. Let's take a look at Plaintiff's Exhibit 530. Sorry about that. I thought I'd just gather a few, but I saved some trips to the exhibit box. Okay, let me find 530 for you, and let me hand it to you. Dr. Knott, Exhibit 530 is an e-mail from Rich Lane -- do you see that?

A. I do.

Q. -- to you, right?

A. Correct.

Q. And you received this e-mail?

A. I did.

Q. And he is, in this e-mail -- at this time, you were still the lead dentist in the Tucson clinic, right?

A. Or just transferring out. I don't know the exact date, but in that time frame.

Q. Right, you were still a lead but getting ready to become regional?

A. Correct.

Q. And he's -- Mr. Lane, I think we've seen, was a FORBA officer, right?

A. Yes.

Q. And he was giving you your instructions about how you were to do your job, right?

A. Yes.

Q. And if you would look at the fourth bullet part, number there, "As the lead dentist," you see that language?

A. Correct.

Q. "As the lead dentist, you have the authority to make staffing decisions as necessary." Right?

A. Correct.

Q. And "they either buy in or they are gone," right?

A. Yes.

Q. That was his instruction to you?

A. Correct.

Q. That's the way FORBA ran these clinics. It was either the FORBA-way or the highway for the staff, right?

A. The directive was more about work ethic than anything else. Work ethic: Get the work done. We can't meet payroll if the doctors won't work, so I -- my job was to make sure they were comfortable working in this environment, dealing with children, and please don't sit in your office. Get the children back; get them numb, get into the operatory, get

them in and out and treat them with great respect and speed.

Q. Well, this "they either buy in or they're gone," that included the dentists, didn't it?

A. Absolutely. Primarily the dentists.

Q. Primarily the dentists.

A. They lead the work ethic in the clinic on a daily basis.

Q. Number five, "If you feel that Dr. Kerr is not matching up with our philosophy, then make the recommendation to terminate him," right?

A. I guarantee that Dr. Kerr was a pediatric specialist who was in Phoenix at that time and he did not have a good work ethic. I wasn't instructing him. He was more highly educated than I, maybe not as experienced. I wasn't telling him how to do his job. I just wanted him to do his job, to actually get off his hands and start treating kids and get that productivity in the clinic so we could keep the doors open, yes.

Q. Well, Mr. Lane didn't say, "If you feel Dr. Kerr is not matching up, is not working hard," it would have been easy enough for him to say, "He's not working hard enough; get rid of him," wouldn't it?

A. There are many e-mails that I interpreted to be just exactly what I stated, is that the bottom line, there was never a shortage of work in our clinics. There was a

shortage of people who really wanted to get the task taken care of. It was more about work ethic, in my opinion, than anything else.

Q. And what he said, he didn't say "work," he said "If he's not matched up with our philosophy, terminate him," right?

Mr. HULSLANDER: Objection, asked and answered.

THE COURT: Sustained.

Q. Dr. Kerr was terminated, wasn't he, a month later?

A. I don't know the exact timing, but he was, yes.

Q. And by the way, you couldn't terminate a dentist as a lead dentist without the approval of Dan DeRose back in the Old FORBA days, correct?

A. I don't believe I ever did. I always sought Dan's counsel on these issues, yes.

Q. Well, you sought his counsel because that's what the FORBA way was. The recommendation to terminate Dr. Kerr has to be approved by Dan DeRose, right?

A. That's right, and a matter of respect as well.

Q. Now, the message to all the dentists that you gave was that it was all about the money, right?

A. No, that's not true.

Q. Let me show you Plaintiff's Exhibit 515, Dr. Knott. Did you send this e-mail?

A. I did.

Mr. HACKERMAN: Your Honor, Plaintiff's would offer Plaintiff's Exhibit 515.

THE COURT: 550?

Mr. HACKERMAN: 515.

THE COURT: Any objection?

Mr. HULSLANDER: No objection.

THE COURT: Exhibit 515 received.

(Whereupon, Plaintiff's Exhibit Number 515 was received in evidence)

Mr. FIRST: I'm just looking at it. It has nothing to do with Syracuse, so I would object to it as being irrelevant.

Mr. HULSLANDER: Same.

THE COURT: Overruled. Exhibit 515 is received.

Q. Dr. Knott, this was dated in July of 2006, this e-mail that you sent, right?

A. Correct.

Q. And you sent it to Dr. -- to Ashley Swan. She was the lead dentist, wasn't she?

A. That is correct.

Q. In Reno?

A. Yes.

Q. And you say in this e-mail to this lead dentist, in the first paragraph, the line two lines from the bottom of it, "We can only pay for increased productivity." Do you see

that?

A. Work ethic.

Q. Increased productivity, that's --

A. Work ethic.

Q. That's all --

A. Get the job done, yes.

Q. And that's the same message that you gave to every dentist in all of the FORBA clinics, including the Syracuse clinic, is that you only pay for increased productivity?

A. If they expect a merit increase on their annual review or if the clinic expects any kind of a bonus activity, they knew what their productivity had to be, and it's no different than being in private practice.

Q. Did you give this same message that we've just seen here, that you only pay for increased productivity, to every dentist in the system?

A. Indirectly, I'm sure I did. You have to produce in order to keep the clinic open.

Q. Your job as a regional was to go into these clinics and get the dentists to perform more procedures on each child; isn't that true?

A. No, to do the work that was to be done, efficiently and effectively, and it benefitted the children the most.

Q. Let's take a look at Plaintiff's Exhibit 45. I'm going to hand that one to you. Did you write this e-mail?

A. Yes.
Q. And sent it to Mr. Roumph and Mr. DeRose?
A. I did.
Mr. HACKERMAN: Plaintiff would offer's Exhibit 45, your Honor.
THE COURT: Any objection?
Mr. FIRST: I would object. By its very terms, it's a rough draft; irrelevant and immaterial.
Mr. HULSLANDER: Same.
THE COURT: Overruled. Exhibit 45 received.
(Whereupon, Plaintiff's Exhibit 45 was received in evidence)
Q. Dr. Knott, let's take a look at Exhibit 45. These were suggestions that you were sending to your boss, Dan DeRose, about how you were going to do your job as a regional, right?
A. I am reading through it. I haven't seen this for a long time.
Q. Well, you saw it at your deposition, right?
A. I don't recall. Okay. I've read it.
Q. This was your telling your bosses how you were going to do your job, right?
A. These were suggestions as to how we may improve our clinic and deal with roughly 40, 45 percent broken appointments, no-show rate, primarily.

Q. When you say the clinic, you're talking about all the clinics?

A. A clinic or clinics, yes.

Q. Any FORBA clinic?

A. Correct.

Q. So what you've done is reduced your suggestions about how you should do your job to standard clinic questions, right?

A. Recommendations of how we might improve our operation, yes.

Q. Let's take a look down at -- Number 10 on your suggestion list. "Do you have a morning huddle and if so with whom and what is discussed?" Right?

A. Correct.

Q. So a morning huddle would be a meeting, a gathering of the dentists every day?

A. The whole staff.

Q. Whole staff?

A. Um-hmm.

Q. And then you say, "reviewing daily production report the morning after and discussing what procedures have been overlooked is a valuable tool." Do you see that?

A. Um-hmm.

THE COURT: Is that a yes?

A. That's a yes.

Q. And you also wrote, "This is also a good time to discuss treatment planning to assist the younger doctors in developing more comprehensive treatment plans." You wrote that?

A. I did.

Q. That doesn't have anything to do with working hard. That has to do with what procedures they're going to do, doesn't it?

A. That has to do with efficiency of treatment, for sure.

Q. It doesn't have anything to do with working hard, does it?

A. It does. It does. If you treat a quadrant and you treat one tooth out of three and you leave two behind, that is unacceptable in a four or five-year-old. You shouldn't be doing that; you should be completing the treatments so the child only has to come in once, not twice or three times.

Q. So you were trying to influence these dentists --

A. I was trying to encourage them.

Q. -- to do more procedures --

A. To complete more --

Q. -- on each child?

THE COURT: Wait, wait. Dr. Knott, you can't talk when he's talking. The court reporter can only take one question at a time. Finish your question and you can answer.

THE WITNESS: Yes.

Q. You were trying to get these dentists to do more procedures on each child, weren't you?

A. Yes, complete their work.

Q. Your job -- well, let me ask you this: Isn't it up to the dentist to decide how many procedures ought to be done on a little child?

A. Certainly. You only treat what you are safe in doing.

Q. So you were trying to influence them as to something that should have been only up to the dentist?

A. Anyone that's treated children for any period of time knows that if you have a child numb in a region, you can quickly complete most procedures in that quadrant, on three or four teeth, almost as quickly at you can treat one tooth.

THE COURT: Doctor, I'm going to ask you to listen to the question and see if you can answer it.

Q. Your job, Dr. Knott, for both old FORBA and new FORBA, was to break the dentists of their old ways and get them onboard with the FORBA treatment model?

A. The answer to that is no. I wasn't trying to break any dentist of anything.

Q. I'll hand you what's been marked as Plaintiff's Exhibit 514. Actually, I think it's already been admitted. Did you receive Exhibit 514 from Rich Lane?

A. I did.

Q. Again, he's giving you instructions; isn't he?
A. Yes.
Q. And this has to do with the retraining of the staff in the Albuquerque clinic, right?
A. Yes.
Q. And that entire staff is being retrained by FORBA?
A. Right.
Q. And he says in Item Number 3 there, "Treat the training as if it were a new clinic," okay?
A. Yes.
Q. So this is going to give us a bird's-eye view of what you did in all those new clinics whenever a new clinic came on line for FORBA. This is what you did?
A. We provided training.
Q. Right.
A. Yes.
Q. "Treat it as if it were a new clinic," the same thing you'd be doing in any new clinic, right?
A. Yes.
Q. And his instructions were, "We need to break the old ways and get them onboard with the FORBA model." That's what you did in all of those clinics, from day one, true?
A. Yes.
Q. And your part of that, breaking the old ways, was that you were to focus on the treatment plan, right?

A. That was one of many things I focused on.
Q. Number 6, "Dr. Ken" -- that would be you?
A. That's correct.
Q. "Will focus on monitoring docs, treatment planning," right?
A. And consultations.
Q. So in this business of breaking them of the old ways, your job was to break them of the old ways on their treatment planning and get them onboard with the FORBA treatment philosophy?
A. I don't agree with your language at all, so I would say no.
Q. Your purpose, Dr. Knott, in trying to get dentists to treat the FORBA way was pretty simple: It was to increase FORBA's profits; wasn't it?
A. It was to provide the best care possible for these little kids.
Q. Well, that may be, but in any of these e-mails and other documents that we've been talking about so far, does it ever say anything about providing the best care to these little children?
A. I couldn't say that it does or doesn't. I can tell you what I -- the conversations and interactions that I had with the doctors consistently.
Q. Let me show you Plaintiff's Exhibit 390. This bottom

e-mail -- it's an e-mail chain with a couple of e-mails together. The bottom e-mail is from Michael Roumph, a FORBA officer, right?

A. Yes.

Q. To you?

A. Correct.

Q. He was also letting Mr. Dan DeRose know what he was doing, right? Do you see the copy up there?

A. Correct.

Q. And what Mr. Roumph told you about this clinic was "production sucks," right?

A. Correct.

Q. You got messages like that frequently, did you?

A. I get a lot of e-mails.

Q. And so he doesn't like the production, does he?

A. Apparently not.

Q. And he wants to know what are we going to do about it, right?

A. Yes.

Q. Or what are you going to do about it?

A. Correct.

Q. "Any thoughts?" Well, let's look up top and see what Mr. Dan DeRose instructed you to do about it. See that's an e-mail from Mr. DeRose, Dan DeRose?

A. Yes.

Q. To you?
A. Correct.
Q. And to Mr. Roumph, right?
A. Correct.
Q. And he says in this e-mail, he makes reference to some per patient production numbers, right?
A. Correct.
Q. Said, "Albany opened two months and their patient production totally sucks," so I guess that's the buzz words when production is not too good; is that the way it was?
A. I don't know.
Q. Says, "regardless of patient flow," right?
A. Yes.
Q. Whether we've got good patient flow or not, is what he's talking about?
A. That's what that e-mail says.
Q. But you didn't always have good patient flow, did you, sir?
A. No, we did not.
Q. You said there was never a time when you didn't have enough patients, but that's not true; is it?
A. When clinics opened, they could be slow.
Q. It was more than just when the clinics opened?
A. In some cases, yes.
Q. It was frequently --

A. Some markets --

Q. -- that there were not enough patients?

A. -- are stronger than others.

Q. So this business of having 1,200 people lined up outside the door, it was just not right, was it?

A. In some cases I have experienced that, but it's not across the board, no.

Q. As a matter of fact, you had a very extensive marketing program in FORBA, both Old and New, didn't you, trying to go --

A. We marketed, yes, we did.

Q. Extensive program, right?

A. Define extensive. I don't know the parameters. I wasn't in marketing. I was in dentistry.

Q. And it was a regular, ongoing program for all the years you were there?

A. I'm sure we had a marketing program the entire time I was with FORBA.

Q. Why would you need a marketing program if you've got all the business --

THE COURT: Mr. Hackerman, you tend to start your question before he's finished with his answer, too, so I'm going to ask you both to please --

Mr. HACKERMAN: I apologize, your Honor. I'll try to do better.

Q. Why would you need an extensive marketing program when you have all the business that you needed?

A. When you have a 45 percent broken appointment rate, many, many patients that appear once don't come back, and so there's a constant need for new patients coming through the door, and I work in a practice now that feels the same way, so...

Q. When you didn't have enough patients to make your budget, you made it another way, didn't you --

A. No -- you got --

THE COURT: Wait a second.

Q. You got the dentists to do more treatment on each patient?

A. No.

Q. Let's look and see what Mr. DeRose said here. "Regardless of patient flow, we need to teach them how to do dentistry." So his instruction to you to get the production up was to go out and teach those dentists how to do more procedures so the production would increase, right?

A. Every e-mail that I read I had to interpret the way I knew I could best apply it to fellow professionals, and if there weren't enough patients, we never encouraged them to do more procedures that weren't necessary on children. Never.

Q. That would be totally, highly unlawful and improper if you did that, wouldn't it, sir?

A. Exactly right, and so there were many clinics that never or rarely met their budget just because of some of the slowness, and that was just a reality. But my job was to make sure that they understood how to treat the kids, and if the opportunities were there to convert the children from the hygiene visit over to the treatment side, don't let them leave if the parent would like to stay and have their child treated the same day to eliminate yet another visit. And yes, it was good for the business, but it was ultimately the best for the child. 50 percent of those children didn't make their appointments.

Q. Your instructions from your boss was -- to do your job to increase revenues for FORBA, was to teach the FORBA dentists how to do dentistry; is that correct?

A. That was my job --

Mr. HULSLANDER: Objection, asked and answered, Judge. This is the third time.

THE COURT: Right, but we're having interruptions here with two people talking. I'm going to sustain the objection.

Q. You, Dr. Knott, pressured the clinics on a daily, regular basis to produce more, right?

A. I coached them, yes.

Q. Let's take a look at Plaintiff's Exhibit 94. There we go. Down at the bottom first, another of these e-mail

chains. This one is from Michael Roumph to you, right? We saw these yesterday. To you, Sean Barnwell and Bob Andrus?

A. Correct.

Q. The regionals?

A. Correct.

Q. All right. "Excellent job this week on the production e-mails." So he was praising you guys for what you've done with regard to these production e-mails, right?

A. Correct.

Q. "Let's keep the pressure up." You had the pressure on; he wanted you to continue to keep the pressure on, didn't he?

A. Yes.

Q. That was your instruction --

A. That's --

Q. -- from your boss?

A. That's true, yes.

Q. "It will make a difference," right?

A. Yes.

Q. So he wants you to not only start but to keep pressuring the dentists, right?

A. Yes.

Q. So let's look at the top and see what you say. Let's scroll up to the top there and see. This is your response to Mr. Roumph saying he wanted you to keep the pressure up,

right?

A. Right.

Q. You said, "I agree," with an exclamation point?

A. Correct.

Q. Your primary focus in your discussions with the dentists at these FORBA clinics was production, right?

A. And work ethic.

Q. Was your primary focus production?

A. No. It was one of the focuses, for sure.

Q. Well, let's take a look -- first of all, let me have marked as Plaintiff's Exhibit -- well, let me show you Plaintiff's Exhibit 398.

Mr. HULSLANDER: Mr. Hackerman, what number?

Mr. HACKERMAN: 398.

Q. You have 398 in front of you. Did you send this e-mail to Mike Roumph and Dan DeRose?

A. I did.

Mr. HACKERMAN: Plaintiffs would offer Plaintiff's Exhibit 398.

THE COURT: Any objection?

Mr. FIRST: Objection. Irrelevant and immaterial.

Mr. HULSLANDER: Same.

THE COURT: Overruled.

(Plaintiff's Exhibit 398 received in evidence)

Q. Dr. Knott, you were drafting a letter that you were going to send to a number of clinics, but before you sent it, you wanted to make sure it was okay with your bosses that you were sending it, right?

A. Correct.

Q. And so you sent this to them, this draft to them, and asked them, "Is this all right?" And one of the things you say in there, in the second paragraph, second sentence -- well, first of all, "on a routine basis, I will be communicating with you about many issues," right?

A. Yes.

Q. Then you say, "My primary focus may seem like production." Why did you think that the clinics would think that your primary focus was production?

Mr. FIRST: Objection to the characterization.

THE COURT: Overruled.

A. Because many of the e-mails that I received and sent were related to production, number of patients, all kinds -- you know, various parameters in terms of the busyness of the practice, so...

Q. Production was a frequent subject with these clinics, all the clinics, wasn't it?

A. Yes, it was.

Q. Including Syracuse?

A. Yes, it was.

Q. Your purpose was to get the dentists to increase their production, in all of these frequent discussions?

A. To be efficient in treatment and be productive, yes.

Q. To get them to increase their production, right?

A. And work harder.

Q. Was your purpose to get them to increase production, Dr. Knott?

A. Certainly.

Q. And that was your purpose at all the clinics, including Syracuse?

A. Correct. One of my agendas was to make sure that our clinics were efficient and productive and treated the children the best and as efficiently as they could.

Q. And your frequent discussions in all of these clinics to get them to increase their production was for Old FORBA and New FORBA, wasn't it?

A. Yes.

Q. Now, I want to talk with you a minute -- well, actually, this may be more than a minute -- about one of the primary topics when you talked to the dentists to pressure them to produce, okay? And this topic -- well, let me ask the question this way.

Mr. HULSLANDER: I'm going to object to this speech in front of the jury, Judge. It's not a question.

Mr. HACKERMAN: I'll ask my question.

Q. One of the primary topics when you were in all these clinics talking to them about increasing production was something called production per patient, correct?

A. It was one of the parameters that we used, yes.

Q. One of your primary topics, wasn't it?

A. One of many.

Q. Sometimes this production per patient was referred to as P.P.P.?

A. Correct.

Q. P.P.P., production per patient, right?

A. Correct.

Q. And FORBA, both in the Old FORBA days and the New FORBA days, tracked that production per patient on a daily basis, didn't it?

A. Correct.

Q. And analyzed it?

A. Certainly.

Q. You watched that P.P.P. number religiously, didn't you?

A. As well as other parameters, yes.

Q. If P.P.P., production per patient, was below what was acceptable to FORBA, you would go have a discussion with the dentists about it, wouldn't you?

A. I analyzed and asked them to analyze the entire schedule as to treatment needs and what was being

accomplished on each and every child; you bet.

Q. So the answer to my question is yes --

A. Yes.

Q. -- if P.P.P. got below what was acceptable to FORBA, you, as a regular routine matter, would go into the clinics and talk to dentists about that?

A. It was always a point of discussion.

Q. And your purpose in doing that was to get the dentists to do more procedures on each patient, right?

A. My purpose was to make sure they were maximizing their exposure, each exposure to the patient, and getting reasonable amounts of dentistry done to minimize the number of visits.

Q. The way they increased the P.P.P. is to do more procedures on each patient, isn't it?

A. Yes, if the child is cooperative, doing two quadrants instead of one quadrant, P.P.P. is going to go up. But guess who the biggest benefactor of that is? It's the child. They come in twice instead of four times, and we have a 50 percent no-show rate.

Q. The number of procedures that should be done by the dentist is a matter up to the dentist, without your influence; isn't that correct?

A. It was always a decision that they had to make. I was not treating the child.

Q. Yeah, what you were doing is going in there and reminding them that they needed to do more procedures so FORBA could make more money?

A. P.P.P., if it was higher, production for the clinic was higher; yes, that's true.

Q. You went in to these clinics and pressured them to do more procedures on each of these little children on a regular basis at all the clinics for old FORBA, for New FORBA, and including the Syracuse clinic, true?

A. Yes.

Q. You trained the dentists to do more procedures on the children to increase FORBA's revenues; bottom line?

A. Yes.

Q. Now, P.P.P., I'm going to try writing on the board. My handwriting is really bad, but I think I want to try it at this time. I have given you fair warning, though. Can anybody read that? Usually people ask if everybody can read it, but when I write I need to ask if anybody can read it. P.P.P., inside FORBA, P.P.P. was referred to as the golden goose, right?

A. That term was used, yes.

Q. "The golden goose." As a matter of fact, you referred to it as the golden goose, did you not?

A. I did.

Q. Let me show you Plaintiff's Exhibit 152. You wrote

weekly reports about your clinics to your bosses at New FORBA?

A. I did.

Q. And they asked you to do that, right?

A. Yes.

Q. And they asked you to do that so you would tell them what you thought was important about what was going on in those clinics?

A. Yes.

Q. Okay. And is this one of those reports?

A. It is.

Q. You sent this report to Mr. Lindley and Mr. Smith, your bosses at New FORBA?

A. Correct.

Mr. HACKERMAN: We would offer Plaintiff's Exhibit Number 152, your Honor.

THE COURT: Any objection?

Mr. HULSLANDER: Objection to the extent they're non-Syracuse.

THE COURT: Overruled. Exhibit 152 received.

(Whereupon, Plaintiff's Exhibit Number 152 was received in evidence)

Q. If you would, Dr. Knott, flip over on the second page -- first of all, just to get oriented here, this is from you and you see it's to Mr. Lindley and Mr. Smith, Central

Region Weekly Report, okay? You with me?

A. Yes.

Q. Let's go to the second page. Under -- and here you had this form you filled out each week and you would report on each of your clinics, right?

A. Correct.

Q. And under Cincy II, that was one of your clinics?

A. Correct.

Q. You say under new opportunities, "P.P.P. is the golden goose." Do you see that?

A. I see that.

Q. Now, P.P.P. -- so you told your bosses that. I mean, that's not something that was a secret. Everybody knew that production per patient was the golden goose, right?

A. It's important, um-hmm.

Q. And, you know, the fact that you wrote it about Cincy II, the fact is that it was the golden goose for every clinic, wasn't it?

A. Including the children.

Q. Yeah, including the Syracuse clinic?

A. Yes.

Q. So when we hear "what's Cincy II got to do with Syracuse?," what Cincy II has to do with Syracuse is what you say about Cincy II is often very relevant to Syracuse; isn't it?

A. Pretty much universal.

Q. Pretty much universal?

A. That's correct.

Q. Production per patient: The golden goose. That was the key to FORBA's fortune, wasn't it?

A. That was a key part of production, absolutely.

Q. We've heard testimony in this courtroom about people making $50 million and $100 million off of this Medicaid business. This is how they did it, didn't they?

Mr. FIRST: Objection.

THE COURT: Overruled.

A. The money had to come from somewhere, so... it had to come from the business side.

Q. You said inside FORBA something else about P.P.P. You said P.P.P. -- "P.P.P. is magic," right? You said that, too? That's how it got talked about inside FORBA, right?

A. Yes.

Q. Production per patient was magic because if you increased the number of procedures done on each little child, then presto; the amount of money increases, right?

A. That's true. It's also magic for the patient because it reduced their number of visits, so it was a dual advantage to that.

Q. We said that about the golden goose. The golden goose, it seems to me, has all to do about money; it hasn't

got anything to do about the little kids and their care, does it?

A. I don't think any of the kids know the difference between one filling or four, and if you can get four done in the same period of time, if I'm that four-year-old, I would want that treatment done as quickly as possible.

Q. Let me show you Plaintiff's Exhibit 168. Did you send this weekly report to your bosses, Mr. Lindley and Mr. Smith?

A. Yes.

Mr. HACKERMAN: We offer Plaintiff's Exhibit 168.

Mr. HULSLANDER: Same objection, Judge. Irrelevant to the extent it doesn't involve Syracuse.

THE COURT: Overruled.

Q. Let's take a look at 168, Dr. Knott, and let's go take a look at Syracuse, so a couple of pages in. Right there. Syracuse?

A. Right.

Q. Production for previous week: M.T.D. production. M.T.D., that's month to date, right?

A. Correct.

Q. That's production for the months you're talking about. "M.T.D. production, P.P.P. is magic," exclamation point. Did you write that?

A. I did.

Q. "P.P.P. is magic!" Production is up. It was P.P.P. magic that got that Syracuse production up, wasn't it?

A. Correct.

Q. Dr. Yaqoob is very proud. Dr. Yaqoob is Dr. Khan, right?

A. Yes.

Q. Dr. Khan bought into the golden goose, didn't he?

Mr. STEVENS: Objection.

A. He's a very motivated practitioner.

Q. Take a look back at Plaintiff's Exhibit 152 again. I previously handed that to you. This one is going to be a challenge for me to write for sure. Uh-oh. I told you; I warned you. You also said the P.P.P. was miraculous, didn't you?

A. I'm not sure, but --

Q. Fort Wayne. Right there, Fort Wayne. "Yes, patient flow is down." So this is one of those cases where you didn't have all the patients you needed; there weren't 1,200 of them lined up outside the door, right?

A. Yes.

Q. But you had a solution for that, didn't you? Didn't you?

A. Increase production.

Q. Yeah. "Month to date 5 percent over budget," right?

A. Yes.

Q. So even though the patient flow is down, if you increase the P.P.P., the production on each patient, even though you don't have enough patients, the production miraculously goes over budget, right?

A. Many times it's as simple as doing all the treatment or half the mouth instead of just one filling or one quadrant, and if the child is agreeable, why not?

Q. Well, why not? Regardless of what it is you're influencing these dentists to do so far as their treatment decisions, if you just say "why not?," it's up to the dentist to decide how much treatment to do and what treatment --

A. Yes.

Q. -- to do; isn't that right?

A. That's correct.

Q. Okay. So the way this golden goose worked is if the patient flow went down, then all you had to do to get back up to the budget and make more money for FORBA was to increase the number of procedures that the dentist did on each little child, right?

A. If the treatment is there to be done, do it as efficiently as you can, yes.

Q. This miraculous mechanism was just a matter of math, wasn't it? The more procedures done on each patient, the more dollars?

A. Yes, and motivation.

Q. Let's take a look at the golden goose in action. Let me show you a document that's marked as Plaintiff's Exhibit 664.

THE COURT: How much longer will you be with this witness?

Mr. HACKERMAN: Your Honor, I would say an hour to an hour and a half.

THE COURT: Okay. We're going to take our morning recess, 15 minutes. Don't talk about the case with anybody.

(Whereupon, a recess was then taken at 10:31 a.m.)

* * *

(Jury brought into the courtroom)

Mr. HACKERMAN: May I resume, your Honor?

THE COURT: Yes, you may.

CONTINUED DIRECT EXAMINATION BY Mr. HACKERMAN:

Q. Dr. Knott, do you know a Dr. Kevin Reilly?

A. Yes.

Q. He became a FORBA regional director in October of 2007?

A. Yes.

Q. And he actually took over the Syracuse clinic from you at that time?

A. That's correct.

Q. You still were a regional director; you just didn't have Syracuse in your clinics anymore?

A. Correct.

Q. And Dr. Reilly was the guy for Syracuse?

A. That's correct.

Q. Now, the clinical training in dentist schools is all about what's best for the patients; isn't that right?

A. That's certainly a major part of our training, yes.

Q. Let me show you what has been marked as Plaintiff's Exhibit 147. And that's an e-mail -- the next to the top e-mail there you see -- from Dr. Reilly?

A. Yes.

Q. It's to you and Dr. Andrus, right?

A. That's correct.

Q. And did you receive this e-mail?

A. I did.

Mr. HACKERMAN: Your Honor, Plaintiffs will offer Plaintiff's Exhibit 147.

Mr. HULSLANDER: Objection, irrelevant.

THE COURT: Overruled.

Q. Let's take a look at what Dr. Reilly wrote to you

while he was regional director of the Syracuse clinics, not too long after he got that job. He was telling you about having observed the doctor training, right? Do you recall that?

A. Yes.

Q. And he was writing his thoughts about it in a document that he was going to send to somebody else, but he wanted to see what you guys thought first, right?

A. Apparently so.

Q. So let's move down and let's see what he had to say. You see in the second paragraph, "With regard to the docs," okay? With "with regards to the docs, they can't get past the uncertainty of S.S. crowns, pulpotomy, papoose, nitrous, the clinical kid-related issues, and the Small Smiles' treatment philosophies. They are scared." Do you see that?

A. I see that, yes.

Q. What were they scared about?

A. I don't know.

Q. Well, you received this e-mail. Did you have a conversation with Dr. Reilly, who had taken over in Syracuse, about what the docs who were getting the training were scared about?

A. I don't recall.

Q. Wouldn't that be an important matter to you if they were scared about the Small Smiles' treatment philosophy?

A. Yes, but I don't recall having a conversation with him about it.

Q. Well, let's read on in Dr. Reilly's messages to you. At the bottom, it says, in the middle, the last line, "as clinicians, we are formally trained to think much differently than the typical Small Smiles' approach. Therefore, we must formally train to flip-flop our thinking." That's what he told you, didn't he?

A. That's what he says, yes.

Q. Wouldn't you say, Dr. Knott, that flip-flopping dentists from their formal clinical training exhibits a total disregard for the safety and best interests of the patients?

A. No. I don't accept that. I don't accept his term "flip-flopping."

Q. Well, if you were flip-flopping the dentists from their formal clinic training, that would be totally, highly improper and not in the best interests of the patients?

A. I agree with that statement.

Q. Let's take a look at -- let me show you what's been marked as Plaintiff's Exhibit 70. Did you send this e-mail?

A. Yes.

Q. And you sent it to a number of doctors -- or dentists, in the FORBA system, right?

A. Yes.

Q. And you also sent it to Dan DeRose?

A. Correct.
Q. Am I right?
A. Correct.
Mr. HACKERMAN: Plaintiffs would offer Plaintiff's Exhibit 70.
THE COURT: Any objection?
Mr. HULSLANDER: Relevance.
Mr. FIRST: Objection, irrelevant and immaterial.
THE COURT: Overruled. Exhibit 70 received.
(Whereupon, Plaintiff's Exhibit Number 70 was received in evidence)
Q. Dr. Knott, in this e-mail, you say -- let's see... "I personally," move down just a little, "In my treatment plans," right? That's where we are --
A. Correct.
Q. The sentence is "I personally believe." That's what I want to focus on, this next sentence. First of all, you say "In my treatment plans, I like to reserve pulpotomy for those teeth that are obvious on X-ray." Do you see that?
A. Correct.
Q. That's what you did?
A. Still today.
Q. You didn't treatment-plan a pulpotomy unless it was obvious on the X-ray that they needed a pulpotomy, right?

A. Correct.

Q. You say: "I personally believe that all primary first molars and primary anterior teeth justify a pulpotomy"-- Do you see that?

A. I do.

Q. "Justify a pulpotomy when restored with a stainless steel crown"-- that's what S.S.C. is?

A. Yes.

Q. And this is children's teeth?

A. Correct.

Q. And anterior means the front?

A. Correct.

Q. Okay. So you're saying that you believe that any first molar for a child or any anterior teeth that need a crown, that you do automatically a pulpotomy?

A. Not automatically but often, yes.

Q. Well, you say "all," right?

A. Most times -- many, many times they require a pulpotomy.

Q. What you said in your letter that you sent to the doctors or the dentists was that you personally believe that all first molars and anterior teeth --

A. Yes, and I further highlight the clinical situations that by the time you prepare that tooth, oftentimes it's blushing pink, which means you're dangerously close to the

pulp tissue, and oftentimes you expose the pulp when you're preparing a front baby tooth for a crown, and so whenever there's that risk, in my professional judgment, you need to do a pulpotomy so that the tooth doesn't -- has less of a chance of abscessing in the future.

Q. Doing a pulpotomy on all first molars and anterior teeth when they're restored with a stainless steel crown is not what's taught in dental school; is it?

A. That's correct, and it's not what the doctors were doing in our clinics. It's just a point I was trying to make, is you have to be careful when you're working on those particular teeth and to be aware of the pitfalls of being too conservative because you're going to subject that child to probable abscess in the near future, and then the tooth has to be removed.

Q. You go on to say in your e-mail to these dentists, "However, I do not want to make my intention obvious on the treatment plan." Do you see that?

A. That's correct.

Q. Not stating your true intentions on the treatment plan is falsifying the treatment plan; isn't it?

A. No, it isn't, because not all of those teeth that I stated would be treated and it's up to the doctor's discretion as to whether a pulpotomy is indicated. If they made the choice to restore the tooth with a routine filling

or a stainless steel crown and didn't do a pulpotomy, that's their choice.

Q. Is there ever a time when it's appropriate not to make your true intentions known on the treatment plan?

A. There are times when you can't know what the final treatment is going to be. On many of these children, we didn't have proper X-rays because the child would not cooperate, so --

THE COURT: Let me ask you to listen to the question and see if you can answer it, okay? Can you read back the question, please?

(Whereupon, the question was read back)

A. No.

Q. Dr. Knott, I want to talk to you a minute about one of these other production numbers. We talked at length about the production per patient, the golden goose. Now I want to talk a minute about production per dentist?

A. Correct.

Q. There is a difference there; isn't there?

A. Sure.

Q. Production per patient is the average dollars done on a patient and production per dentist is what?

A. What they're producing in a given period of time.

Q. "They" being the dentists. The production per dentist is the amount being produced by each dentist, right?

A. Correct.

Q. And sometimes that was referred to as production by provider as well, right?

A. Correct.

Q. Let's take a look at Exhibit 76. Middle e-mail there. From Mr. DeRose -- he says as to this production per dentist, "It's irrelevant; never used it, never will; number one trigger point for fraud." Okay?

A. I see that.

Q. You see that. The truth of the matter is that both Old FORBA and New FORBA tracked and analyzed that production per dentist every day?

Mr. FIRST: Objection to the form.

THE COURT: Overruled.

A. That was one of the statistics that we tracked, yes.

Q. And you analyzed it every day?

A. Looked at all those numbers, yes.

Q. And you used that number, regularly, in your business for Old FORBA and New FORBA?

A. That's correct.

Q. And you used it in all the clinics and you used it regularly on a daily basis in the Syracuse clinic as well?

A. That's correct.

Q. So what Dan DeRose describes as the number one trigger point for fraud you used every day in this Syracuse clinic?

A. It's part of the analysis that we did, yes.
Q. Every day?
A. Yes.
Q. Dr. Knott, FORBA had contests where -- production contests among its clinics?
A. Yes.
Q. Right?
A. Yes.
Q. He got the clinics to compete with each other to see which one could produce the most, right?
A. Yes, the clinics were set up on teams and there was competition, yes.
Q. I'm going to give you one to look at. You had various themes. I'll show you one here in a minute, the Road to the Super Bowl. That was a contest that New FORBA had, right?
A. Right.
Q. Let me show that one to you. Dr. Knott, you've got what's been marked as Plaintiff's Exhibit 683. Did you receive that e-mail?
A. I did.
Mr. HACKERMAN: Your Honor, Plaintiff would offer Exhibit 683.
THE COURT: Any objection?
Mr. HULSLANDER: Irrelevant.
Mr. FIRST: Same.

THE COURT: Exhibit 683 received.

(Whereupon, Plaintiff's Exhibit Number 683 was received in evidence)

Q. Doctor, let's look at 683. This has to do, as we were saying, with one of these contests where you were getting the clinics to compete with each other over production, right?

A. As well as many other factors, average broken appointment rate, number of patients per day.

Q. Okay.

A. Average --

Q. Including production, right?

A. Including production, yes.

Q. Just to get a sense of this, you look over on the third page of the exhibit, you've got -- it's called the Road to the Super Bowl. You've got the western conference and the central conference. You were a division coach, right?

A. Correct.

Q. In this contest that lasted for a month?

A. Yes.

Q. All right. And this wasn't the only one. You had these contests, other contests just like this. You had them, right?

A. Yes, sir.

Q. You had the March Madness contest, the Quest for the Cup contest, right?

A. Yes.

Q. And you had contests both in the New FORBA and Old FORBA period where you were getting the clinics to compete on production, right?

A. I don't remember the timing of those, but...

Q. You don't remember?

A. I don't remember the timing as to whether they were in both Old FORBA and New FORBA, but I remember the contests that you're referring to, yes.

Q. Okay. Let's take one from the old time frame then, just to see if I can refresh your recollection on that. Dr. Knott, did you send this e-mail?

A. Yes.

Mr. HACKERMAN: Your Honor, Plaintiff would offer Plaintiff's Exhibit 687.

THE COURT: 686?

Mr. HACKERMAN: Seven.

THE COURT: Were you just throwing that in to refresh his recollection? I think that --

Mr. HACKERMAN: I'll do that. I was going to offer the exhibit.

THE COURT: Okay.

Q. Take a look at what's been marked 687. Is that an e-mail that you sent concerning a contest where you were getting the clinics to compete on production during the Old

FORBA time frame?

A. Yes, on production and other parameters.

Q. So that's -- excuse me. I'm sorry. So you had those kind of contests during the Old FORBA time frame as well; does that refresh your recollection?

A. Yes.

Q. Dr. Knott, do you think it's in the best interests of the patients for their dentists to be competing with other dentists and other clinics to see who can produce the most?

A. I believe that it does enhance patient treatment. If they -- the doctors respond by doing exactly what it is I coach them to do: To treat effectively and safely and to get as much dentistry done in one appointment as you can, based on the child's behavior. And yes, it increases production, but the child wins.

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

THE COURT: Okay. Cross-exam?

CROSS-EXAMINATION BY Mr. FIRST:

Q. I want to just ask you briefly about what Mr. Hackerman just asked you about. He asked you about an Old FORBA contest from July of 2006, correct?

A. Correct.

Q. And that was a -- that was just before the sale, wasn't it, of the company? See that, 687?

A. Yes.
Q. Just before the sale?
A. Yes.
Q. What Mr. Hackerman did ask you about were the clinic goals that were part of that contest. Is it fair to say that wasn't just about production, was it?
A. No, it wasn't.
Q. And in fact, an important part of that -- an important component of it was to increase the average daily number of patients?
A. Correct.
Q. In other words, to increase the number of these kids who were getting treatment?
A. That's correct.
Q. And another important part of it was to increase the average daily number of new appointments?
A. Correct.
Q. And once again, that was designed to increase the number of kids getting treatment for their dental disease?
A. Right.
Q. And the other parameter that Mr. Hackerman didn't mention was reducing the broken appointments, correct?
A. Correct.
Q. And why was that desirable?
A. Most of our clinics had an average -- I think the

company average was 40 percent of broken or no-shows on appointments, so it was always an effort to confirm and reconfirm appointments to try to reduce that number so that we would have a fuller schedule and see more kids.

Q. And that was generally done by the front office to try to reconfirm and encourage --

A. Right.

Q. -- people to come in?

A. Right. So it was an effort to enhance the entire operation from front to back.

Q. Okay. So when Mr. Hackerman suggests to you that this contest was somehow not in the best interests of these kids, was he telling you only a piece of the story?

A. Absolutely.

Q. Now, you were asked a lot of questions about this P.P.P., production per patient?

A. Correct.

Q. And as I understand what that number is, it's the amount of revenue generated by the treatment of each patient on average?

A. Correct.

Q. All right. Now, is -- you've been in private practice for many years, haven't you?

A. That's correct.

Q. You were in private practice a long time before you

ever became associated with Old FORBA, correct?

A. That's correct.

Q. And you're in private practice now?

A. I work in a private practice, yes.

Q. Okay. And you have been for quite a number of years, recent years?

A. That's correct.

Q. Okay. So you have a lot of experience aside from your FORBA experience, correct?

A. Correct.

Q. Now, is it fair to say that production per patient is a regular statistic that's tracked by dentists in private practice?

A. Absolutely.

Q. And is it fair to say that that in fact is a statistic that's tracked along the entire medical and dental profession?

A. Yes.

Q. So there was nothing unusual during your time at FORBA in keeping track of the production per patient?

A. Not in my mind, not at all.

Q. That's a key indicator of how a practice is doing; isn't it?

A. It certainly is. Yes.

Q. And in multi -- in multi-doctor or multi-dentist

practices, it's not unusual, is it, to track what each of the doctors is producing in terms of what work he's doing and what revenues he's generating; is that fair to say?

A. That's true.

Q. Once again, in a multi-dental practice, from the business point of view, that's one of the ways you keep track of how you're doing.

Mr. HACKERMAN: Your Honor, he's leading the witness. Object.

THE COURT: Yes, sustained.

Mr. FIRST: Why can't I lead the witness?

THE COURT: He's your employee.

Q. In any event, isn't that a statistic that's regularly tracked in multi-doctor practices?

A. It is. I track my production personally even though I'm an employee dentist. I track my production every day.

Q. And do you believe that that is true of just about every dentist in private practice in America?

Mr. HACKERMAN: Your Honor, I object to that as speculation.

THE COURT: I'll sustain on the speculation.

Q. Well, you're familiar with what dentists do generally, aren't you?

A. Yes.

Q. You've been a dentist for how many years?

A. Approaching 40.

Q. So you can tell us whether or not that's a statistic that's regularly tracked by dentists?

A. It is. It's --

Q. Okay. So why don't you tell us, is it or isn't it?

A. Tracking doctor production and total practice production and breaking it down to per patient and per hour production is a very common statistic that is taught by many people that teach practice management and business principles in dentistry. It's been part of my career. No matter where I've worked, it's always been an expectation of efficiency in treatment and work ethic and motivation, to get in and take care of the patients and make that business successful.

Q. And you said in your direct about work ethic, that the philosophy while you were at FORBA was to work hard?

A. You bet. It was.

Q. Can you explain to the jury what you mean by that?

A. It was to use the clinical time that we have available to treat the kids and be as productive as you can, and if that means seeing five patients and doing X, Y, Z that needs to be done versus seeing one patient and doing more treatment to complete their treatment, so the goals were always patient-oriented but the message that I tried to give the dentists was: Keep busy. Use your time effectively. Don't sit in the office and check the Internet and read your novel

and don't make your personal phone calls. You get on the clinic floor, helping hygiene, and if there's patients that need treatment in hygiene, if the parents want to stay and we have time, get that treatment done so the kids don't have to come back. And so that really helped make our clinics more efficient because we knew we were dealing with a 50 -- sometimes a 50 or 60% no-show rate, the average being 40 percent. So many, many times patients did not show on the schedule.

Q. Now, during the Old FORBA period before September 26th, 2006, the dentists worked on salary?

A. Correct.

Q. So they didn't work like -- well, let me ask you. Did they work like most dentists in America on the basis of what dental treatment provided or was it a fixed salary?

A. There was always a base salary that was fixed, and there were some bonuses, but it was different for each clinic.

Q. And whatever bonuses there were, were they clinic-wide bonuses in the Old FORBA?

A. Yes, they were.

Q. Now, I want to ask you about your original training. That was back in Aurora in 2003, I think you said?

A. I think it was December of 2002.

Q. Okay. And you indicated that Dr. Mueller was one of

the ones who trained you?

A. Right.

Q. And you said that you discussed there a range of particular restorative techniques; do you recall that?

A. Uh, yes.

Q. Can you explain to the jury what you meant by that?

A. Well, it's a matter of the options of what treatment is appropriate for the disease they diagnose, and it could be as simple as preventative sealants on permanent molars or it could be as advanced as multiple crowns and pulpotomies on baby teeth that are badly diseased. So it's based on radiographic findings and clinical findings and the child's age and their behavior and risk factors. All of that went into formulating a treatment plan that we felt that was most appropriate for that child. And I think that that's probably the overview that Dr. Mueller brought to all the dentists that came through, at least while I was there, was that overview of all the different factors that the A.A.P.D. recommends to be considered when you're formulating a treatment plan. A treatment plan for a four-year-old is going to be different than a treatment plan on a nine-year-old, because a nine-year-old is soon to lose some or many of their baby teeth, and if they have disease in the baby tooth, it's only six months away from being pushed out, the treatment is likely going to be an extraction versus a

filling or any other treatment. If they're crowded and the tooth is going to be lost within a year, many times you take the tooth out early to alleviate some of the crowding but also to get rid of the disease on that one tooth rather than treating. So those were the kinds of issues I think many general practitioners like myself really didn't receive a lot of in-depth training on in our D.D.S. programs, and -- if like myself, who was treating mostly adults in private practice with a few kids, I certainly didn't have the kind of daily input and experience that I soon learned from Dr. Mueller in that orientation, so that was a very valuable time for me.

Q. When you indicated -- and you referred to it here, that there was a lot of discussion regarding the guidelines that pertain to kids presenting with the dental disease that Small Smiles typically encountered; is that correct?

A. Right.

Q. And what guidelines are you talking about there?

A. Well, guidelines like the developmental charts as to when kids erupt teeth and lose teeth and the timing and the growth potential, crowding issues, always have a lot to say about how you formulate a treatment plan.

Q. These guidelines, do they also address the range of restorative techniques that these kids may need?

A. Sure. They did.

Q. They come from various sources, but among others, the American Association of Pediatric dentists, A.A.P.D.?

A. That's true. That's true.

Q. Now, as I understand it, you became an owner, or part owner of the clinic after the New FORBA era; is that correct?

A. That's correct.

Q. So that would have been after September of '06?

A. Correct.

Q. And you were asked a question by counsel about FORBA can't own these clinics. Are you aware of what the statute or law says in New York about who can own a dental clinic?

A. You must be a licensed practitioner.

Q. Are you aware of any other requirement that's in that statute other than that?

A. No.

Q. Now, let me ask you, when you were with Old FORBA -- let me withdraw that.

You were, as I understand, the lead dentist in Tucson?

A. Correct.

Q. And when that clinic opened, could you give us some idea of the number of patients that were there?

A. I think we had close to 4,000 patients that were pre-open.

Q. Before it even opened?

A. Yeah.

Q. So it was a very busy place?
A. It was very busy.
Q. Now, did anyone during Old FORBA ever pressure you with regard to your dental decisions in treatment of these kids?
A. No.
Q. Did anyone, while you were with Old FORBA, interfere in any way with your professional judgment with regard to any patient?
A. No.
Q. Did anybody encourage you to commit dental malpractice and do something that was inappropriate to these kids?
A. Not at all.
Q. Now, once you became a regional, as I understand it, you also were practicing still; is that correct?
A. Correct.
Q. So you were an active practicing dentist at, I believe Tucson, correct?
A. Correct.
Q. And that was also while you held this regional position, correct?
A. Correct.
Q. Now, while you were regional, did you ever pressure any dentist with respect to dental decisions?
A. No.

Q. And when there's talk in these e-mails about pressure to produce, what does that mean to you as a regional?

A. It means that we as a clinic need to work more efficiently and get the dentistry done that's there to be done.

Q. Okay. When you say "the dentistry that's there to be done," as I understand it, what happens is there's a treatment plan --

A. Correct.

Q. -- which we've seen in the Jeremy Bohn's case. Is that the work that you're talking about that needs to be done?

A. Exactly. Yes.

Q. So to the extent that there was encouragement to get the work that needs to be done, it was the work in the treatment plan based on the evaluation of the dentist, correct?

A. That's --

Mr. HACKERMAN: Your Honor, leading.

A. -- correct.

THE COURT: Well, he's answered it.

Q. Did you ever interfere or pressure any dentist with respect to their professional judgment concerning what treatment should be rendered to a child?

A. No.

Q. Did you ever pressure anyone to commit malpractice?

A. Absolutely not.

Mr. FIRST: Thank you.

THE COURT: Mr. Hulslander?

CROSS-EXAMINATION BY MR. HULSLANDER:

Q. Dr. Knott, still good morning, 11:30.

A. All right.

Q. P.P.P., what is that, P.P.P.? What is that?

A. Patient -- per patient production.

Q. P.P.P. And can you tell the jury exactly what it is that per patient production means?

A. At the end of an appointment, there's been treatment rendered, and it's the sum total of the treatment that was provided at that visit and it's driven by -- tracked by codes, A.D.A. codes, medical coding, by procedure. So at the end of the day, the computer generates a report showing the number of patients seen and the total divided by the number of patients seen and gives you the average productivity on that day's patients.

Q. You mentioned one thing in response to Mr. Hackerman, and you said specifically "maximizing dentistry and minimizing visits." Do you remember that?

A. Yes, I did.

Q. And is that a good thing?

A. Yes, it is.

Q. Tell the jury why that's a good thing, to maximize dentistry and minimize the visits?

A. We have only a certain number of hours available to treat and if patients' patterns are not to show up 50 -- 40 percent of the time, I want to minimize the contacts -- I want to be able to treat the child, and if they only show up roughly half the time, then I'm concerned that they may never come back for a second visit or a third or a fourth, and so that's a problem that has been part of pretty much every clinic that I've been involved with, FORBA or otherwise. That really diminishes the children's ability to receive care, and access to care is a big issue, but if transportation is an issue, then many times even though the door is open and we have staff ready to receive the child and doctors available to treat the child, if they're not there, we can't treat them. So minimizing the number of visits is huge, and it's a big part of managing young children and getting them -- their treatment completed.

Q. Don't those patients -- do those patient's mom's want to minimize the visits to the dentist?

A. Oh, absolutely. Absolutely. Many of the parents of kids that I see today, they'll wait an hour and go back to the reception room after their child has been seen in the hygiene area just to be seen that day so they don't have to

do a return visit. It's a very popular service that we can provide, and I think that was the philosophy of FORBA, both old and New FORBA.

Q. Is it a good thing for the mom and the patient, the child --

A. It certainly is.

Q. -- to minimize those visits?

A. Yes, it is.

Q. Is it a good thing for the patient, the child, and the mother to maximize the dentistry in one visit?

A. If it's possible based on the child's age and behavior, absolutely.

Q. Is it better to treat a cavity when you see the patient and have them under lidocaine than to let that cavity continue, allowing further decay?

A. Certainly.

Q. Tell the jury why it is important to get rid of those cavities?

A. You know, dealing with kids, you don't have the same latitude in terms of observing things. As a general dentist seeing adults, I would point out things about beginning cavities all the time and say, "You have a choice. You can watch this and with good oral hygiene you can hold off this area and maybe not have to treat it for many, many years." You can successfully do that. Baby teeth, it doesn't work

the same way, so you have to be very, very careful about observing beginning areas of decay, especially between the teeth. If you're not careful, within six months' time, you can see a tremendous deterioration, even going from a beginning cavity to a tooth now that needs a pulpotomy and maybe a crown or even worse. The tooth can abscess and has to be extracted, so I think you have to be much more cautious about waiting and watching on little kids.

Q. So it's a good thing to treat now while you have the patient?

A. Absolutely.

Q. And the ramifications of not treating now?

A. Advancement of disease and a lot more complications, necessitating a lot more treatment later on, so...

Q. Okay. So let me ask you this very simple question: Increasing P.P.P., production per patient, isn't that a good thing for the patient?

A. Yes.

Q. So when you say, you know, Mr. Hackerman keeps saying the golden goose. Let me ask you this question: Isn't P.P.P., increasing that, golden for the patient?

A. Absolutely. I believe it is.

Q. Isn't it magical for the patient to get treated in one visit rather than bringing him back for four?

A. Whenever possible, I believe it is.

Q. Isn't it golden? It's magical? Isn't it a miraculous thing that you're able to treat these kids with mouths full of decay, isn't it?

A. It's very gratifying, very gratifying.

Q. You have dedicated your life to that, haven't you?

A. The last twelve years have been very, very positive for me, yes.

Q. You continue to do it?

A. I do.

Q. Every day of your life, except when you're here in this courtroom?

A. Yes.

Q. You have -- how many grandchildren do you have?

A. Nine.

Q. How old are you?

A. Oh, come on now... 67.

Q. Let me ask you this, Dr. Knott: Mr. Hackerman has made some serious accusations against you and these parties here; would you agree?

A. Yes.

Q. Were you looking to hurt these kids?

A. Never. Never. No.

Q. Were you looking to encourage these dentists to commit malpractice and hurt these children? Is that what you were looking to do?

A. Never.
Q. Have you ever done that in your life?
A. Never.
Q. Did you scheme with these men? Did you scheme with these men to hurt children? Is that what you did?
A. Not at all.
Q. We talked about work ethic. Work ethic?
A. Right.
Q. Do you feel it was wrong for you to encourage these dentists to work?
A. Not at all. I felt it was my obligation to encourage them if they expected to be paid, that they needed to perform and keep busy and be productive.
Q. Let me ask you this very simple question: The more these dentists worked, the more kids they helped; would you agree?
A. Yes.
Q. So was it all about the money for you?
A. Not at all.
Q. You know, you were criticized by Mr. Hackerman for not writing e-mails, e-mails that address quality of care. Let me ask you this question, sir: Doesn't it go without saying that these dentists are treating these kids within the standard of care?
A. Absolutely.

Q. Is that what you do, sir?

A. I do.

Q. Is that what you encouraged these dentists to do when you were the regional director?

A. Absolutely.

Q. And you certainly wanted FORBA to succeed as a business and to make money, didn't you?

A. Absolutely. I was excited when the sale went through and there was funds available and was very involved in putting in the 16 new clinics right after the sale. It was an exciting time, to see all those facilities open up and I was so busy recruiting doctors all over the country. Many weeks I didn't get home until Saturday afternoon only to leave Sunday night, so I didn't spend too many nights sleeping in my own bed, but we opened sixteen clinics in a very short period of time and that was an exciting time.

Q. Dr. Knott, were you excited because you were going to make a lot of money? Were you excited because you felt that you could help more children, children that otherwise were not getting help?

A. That part of treating more kids and reaching out was the only reason that I would put myself on the road like I did because I traveled extensively and spent very little time at home, so... and the money, to me, I had a salary. I was happy with my salary. I earned every penny of it because I

was working six days a week, fifteen, sixteen hours a day, either on the phone or e-mailing or boarding planes and trying to do work while I flew. I spent a lot of that salary money flying my wife to meet me and spend time on the road so we could maintain a good, healthy relationship, so... I was thankful for the salary but I was thankful for the position and enjoyed interacting with so many people and hiring dentists and help seeing them grow and get more comfortable in what they were trained to do but really didn't have the experience that they really could feel comfortable, and that was a big part of my job, was to help them get comfortable putting up with, like I do today, 30 or 40 kids crying at me every day, because I'm doing a simple exam, let alone having to try to treat them. So, you know, you just have to develop the tolerance for children that are unhappy because they're immature and they just don't understand what's going on, but if you can get practitioners beyond that, then I think there's a tremendous amount of reward for treating kids. It's a beautiful experience.

Q. Training... we talked about training and Mr. Hackerman mentioned this flip-flop expression that Dr. Reilly referenced in his e-mail. Could you tell this jury what training was all about when you were working for FORBA and specifically the kinds of dentists that you were getting and what you would be confronted with during training and what

you needed to do to get them so that they could work in a clinic with hundreds of screaming and yelling kids that were coming in? Could you tell them about that?

A. Sure. Well, the average dentist was younger and many were foreign-born and foreign-trained and so there were a lot of unknowns meeting some of the foreign-born and trained dentists as to what their training really consisted of. And so there was a wide range of knowledge -- difference in knowledge from one doctor to the other, in terms of what their clinical experience has been. So first of all, I had to try to figure out what their experience has been and what they were comfortable with, and then go from there. And like I referred to my orientation back in Colorado with Dr. Mueller, he's really the -- not the first but the first pediatric dentist I spent any real time with on a continual basis, and so for three weeks I had a lot of interaction with him and learned an awful lot about his training, what he learned, what the A.A.P.D., the standard guidelines, tell us about children's care, and try then to pass that along, as I went into Tucson as a lead doctor and worked with, probably over the three years I worked with, I would guess a half a dozen to maybe more, new graduate dentists and tried to help them get into a comfort zone and understand what it's like to work on kids because most of their training was not clinically oriented toward children. It's more adult-based

dentistry.

Q. Okay. And let me ask you this simple question: Weren't there times when the dentists that came out of dental school just weren't comfortable working on kids?

A. I had -- I had two or three doctors that came to me early in their employment and said, "Dr. Knott, I cannot do this. I've tried. You've tried to mentor me, but the kids are just driving me bonkers," and so --

Q. Is it for everyone?

A. No.

Q. And so was part of the training at FORBA to try to acclimate them as to what to expect in these clinics that were -- had all these kids in them?

A. This is a very true fact. I mean, I had spent -- prior to signing up and joining Old FORBA, I had worked a year on the Navajo reservation in northeastern Arizona, and I thought I knew something about disease, until I stepped into the clinic and I was just shocked with the amount and gravity of the kids' disease. So that was an incredible experience for one year. And I had a similar realization when Tucson opened and I thought I'd seen it all. And now instead of seeing fifteen patients that looked like that on the Indian reservations, I was seeing 50 or 100 patients a day that were almost beyond comprehension of how much disease they had at such a tiny, young age. So, you know, it's shocking to be

confronted with those realities. And in private practice you get into your little niche and do your job and have your patients and have relationships and then all of a sudden you step out of that comfort zone and even for someone that had lots of years of experience in dentistry, I was not prepared for some of those situations. So every bit of training and orientation and encouragement I could get was very helpful to me as a practitioner.

Q. Okay. Mr. Hackerman criticized you for encouraging these dentists to do comprehensive treatment planning. And my question to you is this: Isn't that a good thing?

A. Absolutely.

Q. Tell the jury why it's good to comprehensively --

A. You know, when I saw adult patients -- I think that every young graduate has difficulty at first really understanding the concept of being comprehensive, of -- you don't have to sell dentistry; you present phases and degrees of treatment with a discussion of benefits, of what the end result is likely to be, with treatment or without treatment. I learned those skills over the years in private practice, and I found myself applying those same rules of organization, mental organization when I look at X-rays and I formulate a treatment plan.

So that's what I do pretty much all day long today, is seeing 80 or 85 patients a day, I'm doing probably -- roughly

half or more of these kids have treatment plans and I'm formulating treatment plans. So it's -- you don't have to do everything that you see on the X-rays, based on the age or the behavior of the patient or the development of the child, but you better have a clear view of what's there that you're either going to watch or you're going to treat. And so there's never an absolute treatment plan that can apply to most kids; it's just very individual and younger practitioners, I think, just need to learn some of those disciplines, whether it's on adults or kids.

Q. Okay. Now, most of the clinics, and correct me if I'm wrong, but most of the clinics had more patients than they could handle; would you agree?

A. That's true.

Q. And then there were some that didn't have as many patients. And my question to you is this: The ones that didn't have as many patients, you were criticized by Mr. Hackerman for encouraging P.P.P. in those cases?

A. Correct.

Q. Well, if the dentist isn't doing anything, is it a good thing to encourage P.P.P. when the patient flow is down?

A. Absolutely.

Q. Explain that briefly. I'm almost done.

A. If we have, you know, if we have time on our scheduling, and here again, the practice that I'm in now, I

do it all day long. If one of our doctors has a cancellation or they finish early on a patient, I'm constantly communicating with their assistants as to what capacity they have to convert maybe a child from hygiene that needs some treatment and if the mom is agreeable and she wants to get it done, then we convert that patient to take care of their needs and they come back in six months rather than in two weeks to get more treatment done. So it's a real advantage for the parents and the families. Transportation typically is an issue, and many -- more and more Medicaid patients today are working families, and so they have jobs and so we have early and late hours in our practice today and they just gobble those hours up because they appreciate the flexibility in our schedule, so...

Q. Now, at FORBA clinics, many of them have -- as the Syracuse clinic did -- three or four dentists, correct?

A. Correct.

Q. Let me ask you this: Is teamwork important when you have four dentists treating all these patients?

A. No. It's huge.

Q. It's huge?

A. Yes.

Q. Explain to the jury why it is that you need teamwork in these clinics like FORBA had?

A. Well, it's hard to keep track of what treatment is

being taken care of by each doctor and where they are in that procedure, and so they may be appointed for 60 minutes or 45 minutes, but they may only need 20 minutes or they may need an hour and 15 minutes. So we used in many of -- I think not all but in many clinics, we actually used walkie-talkies and had key people tuned in to the walkie-talkies so we could communicate about what children were in hygiene, what the needs were, and if any doctor had appointment time available to take care of their needs so we could offer it to the parent, and that was a very good system.

Q. Okay. Now, Mr. Hackerman criticized you for running these contests among the clinics. Is there anything wrong with that?

A. No, not in my opinion. It was fun.

Q. Did it encourages teamwork?

A. It did. It really enhanced -- every center worked better. They produced more dentistry, but they were happier and its just we actually learned -- I think the front desk learned that they weren't doing the perfect job with confirming appointments; they weren't using the right dialogue with the parents when they were trying to confirm and stressing the importance of the appointments. And so I don't think there's any part of any one of the clinics that didn't learn something. It was a very valuable tool to help us be more efficient in terms of treating the kids.

Q. Let me ask you another simple question. Encouraging teamwork, encouraging sort of maybe having contests among the clinics to learn things... did the kids benefit from that?

A. Oh, absolutely.

Q. How is that?

A. We saw more kids and we completed more treatment consistently at the same visit as the hygiene checkup, and that was all positive for the families and the kids, without a doubt.

Q. Did these contests help the kids? Did they help the kids?

A. Absolutely.

Q. Now, you've been shown e-mails, and you tried to talk a little bit about communications you had, and I want you to tell the jury about the kind of communications that you'd have outside the e-mail form with these clinics that you were directing and responsible -- ultimately responsible for. Did you have frequent communications?

A. Yes. I had phone contact probably every day or certainly three or four times a week with every clinic in my region and took multiple calls throughout the day on many, many issues and spent a lot of time talking with doctors about issues. And if they had questions, they knew they could contact me by phone or they could leave me an e-mail and I would answer it later that day if it wasn't an

immediate need, so it was -- we had a lot of really good quality discussions with doctors in the region. And once you get to know the personalities and some of their strengths and some of their weaknesses, it was really a positive to interact with them and help them through some of their hesitations. And sometimes they would have difficulties with the child and they would be on the phone talking with me about how they could have done something differently. So it was very positive interaction.

Q. Was that good for the kids?

A. It was absolutely good for the kids. I saw a lot of growth in some of the doctors, who were very timid and shy, very hesitant. They loved the kids but they just didn't know how to manage them, and over a short period of time, they gained lots of confidence and skills that were pretty impressive, I thought, so...

Q. You weren't telling them to do unnecessary treatment that was harming these children, were you?

A. No. But they didn't appreciate me telling them to get off their butts and get out of their office.

Q. And unfortunately, people are human. Some people work hard and some don't, correct?

A. Yes.

Q. And the ones that didn't work hard, you certainly pressured them and encouraged them to work hard, correct?

A. Absolutely.

Q. And so, now Mr. Hackerman, you've heard the FORBA way or the highway. Let me ask you this, okay? The people that didn't want to work hard, did you work with them and try to encourage them to work hard?

A. Absolutely.

Q. And if they continued to refuse to not work hard and be lazy and not treat these kids, did they expose themselves to discipline and termination?

A. Absolutely.

Q. Dr. Knott, do you feel like you're an intimidating guy?

A. You would have to ask my grandkids. I don't think so. I don't believe so at all.

Q. So did you feel like you were intimidating anyone to do things that were -- that weren't appropriate?

A. No, and I would have to say that many of the doctors, if I pushed them about certain statistics, they would push me back, and I encouraged that. I'd say: "Look, look at these four patients that I've highlighted off of today's patient roster." "These two kids were just impossible to treat. They were not cooperative at all. And these two kids had to leave because mom had an appointment." And so I would back off and say, "Okay. That's all I wanted to know. Thank you. You did a good job. Tomorrow is another day." So we had

that kind of back-and-forth working relationship that I felt very comfortable with and that was pretty much universal, after I had a chance to get to know the personalities. It took awhile to get there. My region seemed to change more than stay the same, so I was bouncing all over the country.

Q. I take it you weren't telling doctors to do a pulpotomy on this particular tooth or fix this tooth or pull this particular tooth or do a crown or anything specific to a particular patient's care; is that correct?

A. No. Most of my visits to a clinic, I would pull 10 or 15 charts as I walked in, just randomly, out of the chart bin and go back into an office and I would spend the first 30 minutes going through the chart and just looking for clarity, accuracy, making sure the treatment plan and the treatment rendered and the billing was correct and just did kind of a little mini-audit. And the rest of the time would be spent interacting with the doctors, answering questions and encouraging them to get involved in discussion about treatment plan, and oftentimes we would go to lunch and we would have some X-rays available and we would talk about some of their treatment plans and how it went and what treatment they actually rendered and make sure that we were all kind of understanding how one practitioner was reading X-rays versus another. It's a habit that I have right now as the old guy amongst two specialists. I bring X-rays and questions to

them all day long and they do the same to me, so a good practice is a very positive environment in that regard.

Q. You weren't telling them they had to make more money for the FORBAs?

A. No. Just that they had to do their job, stay busy and earn their paycheck.

That's what I wanted them to do. And treat the kids well.

Mr. HULSLANDER: Thank you, Doctor.

Mr. STEVENS: No questions.

THE COURT: All right. Thank you. Mr. Hackerman?

Mr. HACKERMAN: Yes, your Honor.

REDIRECT EXAMINATION BY Mr. HACKERMAN:

Q. Dr. Knott, when you wrote to your bosses in those weekly reports that you wrote every week where you wrote about the golden goose -- you recall we talked about that?

A. Yes.

Q. And now you have talked about it with Mr. Hulslander. There's nothing in that report, when you used the term "golden goose" -- you now want to say that had to do with the best interests of the little children, but when you wrote that word, when you wrote that phrase in that report, it didn't have anything to do with that; it had to do with

money, didn't it?

A. It had everything to do with P.P.P. and P.P.P. has everything to do with treating the kids efficiently.

Q. And when you wrote that word, you were talking about where are we on our production? You weren't talking about this is really good for the little kids.

A. That was a production report, correct.

Q. It was a report to your bosses?

A. Exactly.

Q. It wasn't just a production report, it was a report about whatever was important that was going on in your clinics; isn't that what you said?

A. I don't think I said that at all.

Q. Well, we'll see. The same for the magic. When you wrote that down, you did not have in your mind, like you do today -- when you wrote that down, you didn't have in your mind that this is magic for the little kids. You're not asking this jury to believe that you had that in mind when you wrote that word down in that report that you sent to your boss?

A. My emphasis has always been on my patients from the start of my career until today, and it always will be.

Q. Are you telling the jury that when you wrote this word, wrote this down on that report to your boss about Dr. Yaqoob Khan getting the budget -- getting the production up

to the budget by using the P.P.P., when you used that word "magic" in that context, you were talking about this is magical for the little kids? Is that your testimony?

A. Meaning the same, yes.

Q. And the same for miraculous?

A. That's right. That's right. It works for everybody.

Q. When you wrote that, you were talking about --

A. Absolutely.

Q. -- talking about how miraculous it was for the little kids, not how miraculous it was for FORBA; is that your testimony?

A. It goes both ways. It's great for kids and it's good for business.

Q. There were some -- let me -- I'm going to show you what's been marked as Plaintiff's Exhibit 667. Did you send this e-mail, Dr. Knott, to Judy Mori in the Albany clinic?

A. I did.

Mr. HACKERMAN: Your Honor, we would offer Plaintiff's Exhibit 667.

MR. FIRST: Objection. It's beyond the scope of cross.

THE COURT: Overruled.

(Plaintiff's Exhibit 667 received in evidence)

Q. Now, Doctor, you sent this e-mail to Dr. Mori?

A. I did.

Q. And she was the lead dentist in the Albany clinic?

A. That's correct.

Q. And what you say in here is: "I'm seeing roughly a 30 percent B.A." That's the broken --

A. -- right.

Q. --appointment rate. "Six hygiene conversions," and then you say: "In order to play with the big boys, you have got to get your docs motivated to pull more and complete more of the treatment."

A. Correct.

Q. Get your docs to do more treatment; that's what you were instructing them to do, right?

A. Correct.

Q. You didn't say, "in order to do better quality care," you need to get your docs to do more treatment. You said, "In order to play with the big boys"?

A. I did.

Q. And that's the message you were giving to these dentists; you were telling them if you don't get your dentists to do more treatment on these children, you're not going to make it in this company; isn't that right? It had nothing to do with quality of care?

A. That's not true.

Q. Well, what big boys were you talking about?

A. I was talking about the overall productivity of the

clinic.

Q. What big boys were you talking about that you needed -- that she needed to know that if she didn't --

A. The clinics that are converting --

Q. Wait a minute.

Mr. HULSLANDER: He asked a question. What was he talking about? Can he finish?

THE COURT: He's finishing his question now.

Q. What big boys was it that you were telling Dr. Mori that she, in order to play with, she was going to have to get her dentists to do more treatment?

A. Clinics across the country that were being very successful in terms of seeing patients' conversions, bringing patients from hygiene to the other side to have their treatment done the same day, covering the broken appointment and no-show rate, seeing more kids because they're there, why not see them while they're there rather than bring them back? It's to the child's advantage.

Q. Let me show you Plaintiff's Exhibits 665 and 666. They go together. 665, Dr. Knott, you sent this e-mail to Mike Roumph?

A. I did.

Q. And 666, you sent that e-mail to Mike Roumph as well?

A. Right.

Mr. HACKERMAN: Your Honor, Plaintiff would

offer Exhibits 665 and 666.

THE COURT: Any objection?

Mr. FIRST: A couple. They have nothing to do -- I would object to them as having nothing to do with Syracuse, irrelevant and immaterial. It's also beyond the scope of the cross.

Mr. HACKERMAN: Your Honor --

THE COURT: Anyone else?

Mr. HULSLANDER: I'm objecting it's beyond the scope as well.

THE COURT: Beyond the scope?

Mr. HULSLANDER: This isn't in response to what I asked.

Mr. HACKERMAN: Your Honor, the testimony of Mr. Hulslander --

Mr. HULSLANDER: I think we should approach --

Mr. FIRST: Objection, Judge.

THE COURT: I need to read them first for a second.

Okay. Do you want to approach?

(Discussion off the record at the bench)

THE COURT: Exhibits 665 and 666 received.

(Whereupon, Plaintiff's Exhibit Numbers 665 and 666 received in evidence)

BY Mr. HACKERMAN:

Q. Dr. Knott, if you take a look at Exhibit 665, this was an e-mail you sent concerning the production in the Boise clinic, correct?

A. Right.

Q. Sent in August of '05, right?

A. Correct.

Q. And you say, "Mike" -- that's Mike Roumph, who you sent it to?

A. Correct.

Q. "I had a teleconference with all the Boise doctors this morning." You refer to a Dr. Maryam--

A. Correct.

Q. And you challenged them to work together to maximize treatment, right? That's what you did?

A. Correct.

Q. And told them in spite of low patient numbers that their production was unacceptable, right?

A. Correct.

Q. So you were pressuring them to maximize treatment and you did it in the context that their production numbers were unacceptable, right?

A. That's correct.

Q. So you were trying to get them to produce more?

A. Correct.

Q. You were leaning on them, pressuring them?
A. Trying to get them to convert the patients that needed treatment that were walking out the door.
Q. And by the way, here's another one where, that in spite of the low patient numbers, they weren't lined up outside the door in the Reno clinic, either, were they? They had low patient numbers?
Mr. HULSLANDER: You mean Boise.
Mr. HACKERMAN: I'm sorry, Boise; that's correct.
A. They weren't the strongest clinic; that's for sure.
Q. Well, they didn't have all the patients they wanted --
A. That's true.
Q. It doesn't fit with the idea that you have patients overflowing the clinics?
A. This clinic was one of the slower clinics.
Q. And that's one thing you did, was lean on them to produce more with the patients you had?
A. Keep busy, yes.
Q. Let's look at Exhibit 666. That you wrote the next day after your discussion with the dentists where you were trying to get them to increase their production, their treatment, right?
A. Correct.
Q. And you say to Mr. Roumph in this e-mail, "Just

finished follow-up with J.D.," see that? First sentence, "Just finished follow-up." That's the follow-up on the conversation you had the day before with these dentists, right?

A. Yes.

Q. These four dentists. And you say down in that paragraph near the end of it, "I think I have the attention," right? "I think I have the attention of three of the four doctors." So you thought you got your point across to three of the doctors, right?

A. Correct.

Q. "With continued pressure, I think Dr. Maryam will depart." You were pressuring the dentists in that clinic to do more procedures on those little children in order to increase production. You got three of them to go along, you thought, and on the one that didn't go along, you were going to pressure her to leave, weren't you?

A. She was a very unhappy person, so -- she was one of those doctors that I believe didn't fit into children's dentistry. She couldn't handle her own emotions let alone the kids.

Q. Why didn't you just tell her that instead of continuing to pressure her to leave?

A. I had many conversations with her over a course of many months, so this e-mail is only the tip of the iceberg in

terms of interaction.

Q. I think you've got up there Exhibit 687. It's not in evidence yet. I wanted to ask you about -- it had to do with those contests. Do you have that one handy?

A. I do.

Q. Okay. This one happened to be in the Old FORBA time period, right?

A. Correct.

Q. And you referred to it and answered some questions from Mr. Hulslander about, well, there are other things in here besides increasing production in this context, right?

A. That's true.

Q. And that's certainly true; isn't it? One of things is production and then there are other things like increasing the average number of patients, right?

A. Certainly.

Q. And so you had contests to increase the number of patients, right?

A. Certainly.

Q. Well, why do you have to have contests to increase the number of patients if you've got -- through the whole system, if you've got all the patients you need?

A. You can answer that very easily: If you have a front desk that's lazy and not doing their job and getting the patients on the schedule and there are holes in the schedule,

we want to make sure that they're calling patients -- those are the broken appointments -- to see if we can get them back onto the schedule, to see if we can actually see the kids and treat them.

Q. The bottom line is that you did have contests to -- systemwide, for both Old and New FORBA, to try to increase the number of patients in the clinics; isn't that true, sir?

A. Absolutely. It's part of good business.

Q. The contests that we saw for New FORBA, and that contest, too, you didn't have any contest for quality of care, did you?

A. I always made sure that the doctors understood that that was always the expectation, that the quality was going to be there, that the oath that they took when they got their D.D.S. degree, they would follow that and cherish that because that's the most important thing in their professional life is making sure that they always keep the patients' best interests in mind.

Q. Is that a yes answer?

THE COURT: Doctor, can you listen to the question -- Val, read the question back -- and answer the question.

Q. I take it that's a yes to my question? You didn't have any contest for quality care, did you?

A. No, didn't think those were needed.

Q. One final question or two. Mr. Hulslander talked with you about P.P.P., and I think your testimony was that lots of dentists track P.P.P.; is that right?

A. Yes.

Q. Is it your testimony, sir, that it's proper to use P.P.P. to influence other dentists in their treatment decisions?

A. I don't think that ever happened. No, I don't think it's proper and I don't think it happened.

Q. So that's not happening on a regular basis in all of these dental practices that you talk about, is it?

A. I believe that it's important to produce efficiently, use your time wisely and treat the patients to the best of your ability.

Q. All these other practices that you've testified about, they're not using P.P.P. to pressure the dentist, other dentists to treat differently, are they?

A. I couldn't -- I couldn't answer that question. What other practice are you talking about?

Q. The same ones you're talking about who you said tracked P.P.P. regularly.

A. I have tracked it in my private practice the entire -- my entire career. I knew exactly what I produced on each patient. I knew exactly how much production I had per hour, and it was a goal. I had my schedule highlighted so that I

knew when to schedule the high-production items and when to schedule consultations and items that were relatively no production.

Q. Let me see if I can focus this for you, Dr. Knott. You testified that in your experience, dental practices generally track P.P.P.?

A. They do.

Q. That's what you testified to Mr. Hulslander's question?

A. That's right.

Q. Those same practices you testified track it, they don't use it to pressure dentists to do more procedures, do they?

A. I don't know how they use it. They track it. I don't know how they use it. I know how I used it. I applied it to myself. I was the only practicing dentist in my private practice.

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

THE COURT: Thank you.

RECROSS-EXAMINATION BY Mr. FIRST:

Q. Exhibit 665, do you have that in front of you, Doctor?

A. I do.

Q. The part that Mr. Hackerman did not highlight in that first paragraph was your talk here about working hard and

doing everything we can; isn't that correct?

A. That's right.

Q. And what does that mean?

A. It means treating every patient that needs care, if you have time to.

Q. Okay. And that's exactly what you have been saying all along in front of this jury this morning; isn't that correct?

A. Absolutely.

Q. Thank you.

RECROSS-EXAMINATION BY Mr. HULSLANDER:

Q. Now, Mr. Hackerman, Dr. Knott, is criticizing you for doing conversions; do you understand that?

A. Right.

Q. Please tell the jury why it's a good thing to do conversions?

Mr. HACKERMAN: I object to that as a misstatement of the record.

THE COURT: Overruled.

Q. Please tell the jury quickly, because we all want to go to lunch, why it's a good thing to do conversions?

A. Well, I think I already said it but I'll say it again: If you have a 40 percent no-show rate in your patient base and you have families that are struggling with basic

transportation, it makes perfect sense that if a child is there for a hygiene visit and we diagnose disease, if we have the opportunity to treat and the parent agrees, we want to try to treat that patient right then and there so that mom doesn't have to come back, and we know that the child is now in a safe zone, so it works for everyone.

Q. It's back to P.P.P., right?

A. Exactly.

Q. Exactly. Now, Boise, Boise was sort of an unusual clinic; it didn't do as well as the others; is that right?

A. True.

Q. And rather than just point to one little sound bite or two little sound bites out of an e-mail with one little sentence, can you tell this jury about the Boise clinic and why it was that you had to address issues with that particular doctor?

A. Well, it was just one of those clinics that never quite jelled. We had a really hard time staffing it to begin with, and not just doctors but just general dental assistants and hygienists, and we had constant turnover with our doctors for the first year or so. So we just had very little stability, and personalities were changing; staff attitudes were never really good, and so it was just -- human resources were always in the top one or two topics of discussion every time I visited or every time I picked up the phone. So it

was -- the whole clinic was just problematic.

Q. Did you only have two communications with that doctor who you felt like, you know, wasn't fit for the practice?

A. I worked with her hand-in-hand. I spent many weeks in Boise working clinically, treating patients, mentoring her, working over her shoulder, sitting her down and helping her understand some of the basic behavior management tools that most pediatric dentists use every day, throughout the day.

Q. So when you first noticed that there was an issue with this particular doctor, did you work with her or did you just walk in and say, "You're fired. You're not doing it the FORBA way because you need to go to the highway"? Did you do that?

A. No, no. I spent many visits with her and at times felt we were making really good progress, but there were things going on in her personal life that were really, I think, overwhelming her.

Q. And that just happens from time to time with people, doesn't it?

A. It does.

Mr. HULSLANDER: Thank you.

THE COURT: Mr. Stevens?

Mr. STEVENS: No questions.

THE COURT: All right. You may step down.

(Whereupon, the witness was then excused).

THE COURT: We're going to take our lunch break now. Don't talk about the case, don't do any independent research, and we'll see you back here in an hour.

(Whereupon, the jury was excused)

THE COURT: Could I see counselors up here for a second?

(Discussion at the bench off the record)

THE COURT: 147 and 168 are received)

(Whereupon, Plaintiff's Exhibit Numbers 147 and 168 were received in evidence)

(Whereupon, luncheon recess was taken at 12:28 p.m.)

THE COURT: Are we ready to proceed?

Mr. LEYENDECKER: Yes, your Honor.

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

THE COURT: Okay. Are you ready to proceed?

Mr. LEYENDECKER: The plaintiff's call Dr. Yaqoob Khan.

Dr. YAQOOB KHAN, having been called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. LEYENDECKER:

Q. Good afternoon, Dr. Khan. Do you recall that you gave your deposition in this case?

A. That's right.

Q. I would like to bring you that deposition. We may refer to it from time to time, and if you have any questions, I want you to feel free to look at it, okay, sir?

A. Sure.

Q. You are a dentist?

A. That's right.

Q. A general or pediatric dentist?

A. A general dentist.

Q. And where did you go to dental school?

A. I went to dental school first in Pakistan. I did my D.D.S., four years of dental school and then one year residency, and then I went again to Boston University Dental School.

Q. You graduated from dental school in Pakistan in 1996, as I understand it?

A. That's right.

Q. And then did you become licensed to practice dentistry thereafter?

A. No, we had to have one year advanced education, one year residency program, and after that -- that was a

requirement, and we had to do that and finish it and then we became licensed dentists.

Q. Am I right that you didn't have to take a test to get your license to practice dentistry in Pakistan?

A. That's right.

Q. And then when did that happen? About 1997 you got your license?

A. That's right.

Q. And did you work as a dentist before coming to the U.S. in the year 2000?

A. I did.

Q. And what did you do your first year or two that you were here in the United States, sir?

A. I was not for two years -- I came to Florida from Pakistan. I worked there as a dental assistant in the University of Florida Dental School at Gainesville, and I worked there for a few weeks as a dental assistant, but I knew that I had practiced back in Pakistan and I was working in my government hospital, so I worked there and I realized during those few weeks when I was there in Florida Dental School, working as a dentist assistant, that I was not having enough time to prepare for my national board exam, which was a requirement for foreign-trained dentists to go to dental school again, so I went back to Pakistan and was working there and was preparing for the national board because I had

my own practice, so I had more flexibility versus the one in Florida. I had no control; obviously, I was working for somebody. When I was working in Pakistan for five months, I was also preparing for the national boards. So I came back to Chicago in July --

Q. Dr. Khan, do you remember my question?

A. Sorry. Say it again.

Q. Am I right that you were not working in the year-and-a-half or so, most of the time, after you came to the U.S. before you started that foreign-trained dentist program at Boston?

A. It was more like a year.

Q. But am I right that you were not working most of that time after you came here and before you started your program at Boston?

A. No, I was only preparing for the boards exam.

Q. Let me get you to turn to Page 21 of your deposition. And I want to focus you in on Line Number 9?

A. Page 21?

Q. Yes, sir. Are you with me?

A. Nine?

Q. Line 9. Question: "Most of the time in the year or year -and-a-half you were in the United States before you began dental school, you were not working; is that true?" And your answer was?

A. Yes, I was not working.

Q. Now, this program that you went through at Boston University, was that designed for foreign-trained dentists?

A. That's right.

Q. And normally in the U.S., you have to go to dental school for four years?

A. That's right.

Q. But if, for those folks like yourself who have been trained in foreign countries, then they've got a special program where you can get your license after just two years?

A. That's right.

Q. And so those two years are the ones that you went to Boston?

A. That's right.

Q. Now, was that a pediatric residency or just that you could become a general dentist in the United States?

A. To become a general dentist in the U.S.

Q. Now, did you get a loan to pay for some of your dental school?

A. I did.

Q. You did. And was that a loan from the government or from some other source?

Mr. STEVENS: Objection, relevancy.

Mr. LEYENDECKER: I'll pass that up, your Honor.

THE COURT: Overruled.

Q. Let's move on. You got a loan, right?
A. Yes.
Q. Forget about the source. And am I right that after completing your two-year program at Boston, your first job was at the Small Smiles Syracuse clinic?
A. That's right.
Q. And you interviewed with Mr. Dan DeRose and were offered that position?
A. That's right.
Q. And you worked at Small Smiles from that point in 2004 all the way 'til 2010 sometime?
A. That's right.
Q. And are you practicing dentistry still in the New York area today?
A. In this area?
Q. Today. Are you still practicing in New York today?
A. Sorry, I can't understand your question.
Q. Are you still practicing dentistry in New York today? We know you're not with Small Smiles anymore --
A. No.
Q. And where are you practicing, sir?
A. Saudi Arabia.
Q. Are you licensed to practice dentistry in New York today?
A. No.

Q. I want to move to that point in time when you became the lead dentist at the Syracuse clinic because my understanding is you worked for awhile as an associate dentist and then you became the lead?

A. That's right.

Q. So let me hand you what's been marked as Exhibit Number 726 and ask, Dr. Khan, if you can identify this as a couple of e-mail exchanges between you and Mr. Roumph in October of 2005, specifically October 26th, 2005?

A. Yes.

Q. Okay. Is it fair to say, Dr. Khan, that you were willing to do -- you wanted to be loyal to the Syracuse clinic?

A. I was loyal to my patients, yes.

Q. Weren't you ready to always be there whenever and wherever the FORBA system needed you?

A. I was mostly based in Syracuse.

Q. Isn't it fair to say, Dr. Khan, that you were looking for a long-term association with Small Smiles and that you were looking to display your loyalty and be wherever and whenever and do whatever they wanted; is that fair to say?

A. Sure, I wanted to stay as long as I could to help those children, sure.

Q. Dr. Khan, is Exhibit 726 an e-mail exchange between you and Mr. Roumph?

A. Yes.

Mr. LEYENDECKER: Plaintiffs would offer Exhibit 726, your Honor.

THE COURT: Any objection?

Mr. FIRST: No objection.

Mr. McPHILLIAMY: No objection.

Mr. STEVENS: No objection.

THE COURT: Exhibit 726 received.

(Whereupon, Plaintiff's Exhibit 726 was received in evidence)

Q. Let's just look at a couple of portions of that e-mail, and I want to focus first on the bottom, Dr. Khan, because the e-mail exchange between you and Mr. Roumph began with an e-mail you sent to him, right?

A. Looks like it, yes.

Q. This is an e-mail from October 26th, 2005, before you became the lead but you were hoping to become the lead; is that fair to say?

A. I would have to read the e-mail to answer.

Q. Allow me. Yes, sir.

A. Yes.

Q. Okay. Let's just look at a couple of things you told Mr. Roumph back in October of '05. You say, "Thank you for the evaluation you did." And remember that Mr. Roumph was the one that had done your performance review?

A. That's right.

Q. And you did those performance reviews, once you became the lead, on the associate dentists?

A. That's right.

Q. And you did them regularly, every six months, every year, whatever the schedule; is that fair to say?

A. That's right.

Q. You say, "I'm especially happy that you mentioned about my loyalty to the practice during its transition from Dr. Bob to Dr. "Genine," and are those references of the transition from Dr. Bob Turner to Dr. Janine Randazzo?

A. I would say yes.

Q. "I will always be there whenever and wherever you need me to be." You wanted him to understand that you were loyal and you would be there for FORBA whenever and wherever they needed you, right?

A. It does not apply there. It talks about the patients.

Q. Let's keep reading here. "I'm still looking forward to the" quote, unquote, "long-term association contract we discussed." You and he had been talking about your desire to be the lead and to have a long-term agreement, right?

A. I don't specifically recall that we had discussed any lead position at this point, but I definitely remember he had evaluated me and given me a very good review, that I was working -- that I was a good associate dentist. So, I don't

really recall the specifics, that we discussed any lead dentist position, but at the point we had done the review and it was a very good review from him.

Q. To go on, "Just to inform you that our office manager, Nadine" -- is that VandeWalker?

A. That's right.

Q. "Nadine has requested me to sign all the charts after Dr. Bob leaves on Mondays. Dr. Jeanine, Naveed and Loc Vuu -- and those were three dentists at the clinic at that time? Dr. Janine -- Naveed is a reference to Dr. Aman, correct, sir?

A. Yes, sir.

Q. And Dr. Lok Vuu was another dentist working at the clinic at the time?

A. Yes, sir.

Q. So "Nadine, the office manager, has requested me to sign all the charts after Dr. Bob leaves on Monday. As per Nadine, it will take a few more weeks before Dr. "Genie" will be able to sign those charts." Now, let me ask you: Is the doctor supposed to sign the medical charts of treatment that other doctors have evaluated and performed? Is that appropriate, sir?

A. That is not a yes or no question. Number one -- that I remember -- since you read the whole --

Q. Here's my question, okay?

A. Yes, yes, you're --

Q. Here's my question. If you can't answer it with a yes or no or you say you don't know, that's fine, but I think the question can be answered with a yes or no or I don't know, and if you can't, let's have it. Is it appropriate for a doctor to sign -- let me back up one step. Is it fair to say when a doctor signs this medical record he is certifying that "I did the work, that it was appropriate and it was provided in a good quality fashion." Isn't that part of what you certify when you sign those charts?

A. No.

Q. Okay. So you're telling us it's no problem for one doctor to sign the chart of the work done by other doctors?

A. That's right, but that's part of it.

Q. Okay. "As per Nadine, it will take a few more weeks before Dr. Janine will be able to sign those charts. They -- I have consented for this new assignment, but I don't know if there can be any implication, and if there are any in the future, I would hope that you will stand by me in that case." And you wanted Mr. Roumph to know that you were loyal, that you would do whatever was necessary, including signing the charts of other dentists who were not yet authorized by Medicaid to be treating patients?

A. That's not true.

Q. Okay. Let's look at -- am I right that about one

month after -- well, before we go to that, let's look at the top and see what Mr. Roumph has to say to you. "Yaqoob, you are doing a great job for us and we recognize your hard work. You will be a lead dentist for us one day soon."

Does that refresh your memory, Dr. Khan, that the discussions you were having with Mr. Roumph were about your desire to become a lead dentist?

A. No.

Q. You did become a lead dentist about a month after this, right?

A. No, that was -- as I recall, Dr. Janine became the lead dentist.

Q. Let me see if I can ask it this way: Did you sign an agreement about one month later to become the lead dentist at the Syracuse clinic?

A. I don't remember the specific dates.

Q. Well, let's look at it. It's Exhibit 713. Dr. Khan, do you recognize Exhibit 713 as the agreement you signed to become the lead dentist at the Syracuse clinic?

A. Yes, I do.

Q. Okay. And you signed that agreement when, sir?

A. November 7th, 2005.

Q. Okay. So really a couple of weeks after that exchange we just looked at?

A. Yes, it does.

Q. And the agreement contemplates that you're going to begin as the lead dentist in March of '06?

A. That's right.

Q. And that's when you started working as the lead dentist was in March of '06?

A. That's right.

Q. And when you got that promotion to lead, they also gave you a raise from 138 grand to 168 grand a year?

A. That's right.

Q. Now, after you became the lead at Syracuse, am I right that you began to take direction from Mr. Roumph?

A. Partly, but I had interaction with many people in the management.

Q. But am I right that you began to take direction from Mr. Roumph?

A. Say it one more time, please.

Q. Sure. I'll tell you what: Let me see if I can be real precise. When you became the lead dentist, or you were becoming the lead dentist, you started getting direction from Mr. Roumph, right?

A. Mr. Roumph was one of the management, yes.

Q. I want to look for a few minutes at some of the direction you were getting from Mr. Roumph, and in particular I want to hand you Exhibit 716. See if you can identify that for us. Can you identify Exhibit 716, Dr. Khan, as an April

21st, 2006 e-mail exchange between you and Mr. Roumph?

A. Yes.

Mr. LEYENDECKER: Plaintiffs offer Exhibit 716, your Honor.

THE COURT: Any objection?

Mr. STEVENS: No objection.

Mr. McPHILLIAMY: No objection.

Mr. FIRST: No objection.

THE COURT: Exhibit 716 received.

(Whereupon, Plaintiff's Exhibit Number 716 was marked for identification)

Q. Okay. Let's start at the bottom, Dr. Khan, because like the last e-mail, this starts with one from Dr. Roumph and then there's a response from you. Last time it was you and he responded but... down here at the bottom, Dr. And Nadine, he's writing to you about production, right?

A. That's right.

Q. And he's talking about the dollars being generated per day in the Syracuse clinic?

A. That's right.

Q. And he says that, "March production was $13,400 per day with 77 patients. April was about $1,000 less than that," right?

A. That's right.

Q. And he was saying that "now we are $2,800 per day

under budget." So pretty quickly after you became lead, Mr. Roumph was talking to you about missing budgets and how much lower the clinic was than the budget, right?

A. We used to have that interaction, yes, we did.

Q. I beg your pardon?

A. We used to have that interaction, yes.

Q. And up here at the top, let's see what you told Mr. Roumph. You say, "I think we did pretty good in March under stressful conditions of rotating new dentists and not having four dentists at one time. Dr. Koury" -- and is that a reference to Dr. Koury Bonds?

A. That's right.

Q. "Dr. Koury is still fresh in the field and will need some time. However, I am absolutely confident that he will make this office a better place. I will not leave any stone unturned until Syracuse office becomes one of the best in the entire corporation." And you wanted Mr. Roumph to know now that you had been made the lead, that you would leave no stone unturned until that clinic became one of the best in the corporation?

A. That's right.

Q. Because that's what's you were working for, a corporation, right?

A. I was working for Small Smiles.

Q. And one of the stones that you were turning over to

make sure that Syracuse became one of the best in the corporation was the production per dentist statistic, was it not, sir?

A. It was one of the many.

Q. Let's look at Exhibit 101F, and it's in evidence. This is a May 31, 2006 e-mail. We looked at this previously, I think a couple of days ago. But just to make sure we're oriented on time, it was about a month earlier that you were telling Mr. Roumph you wouldn't leave any stone unturned. That was our last e-mail. Do you see that time relationship, sir?

A. I don't know if it was the last e-mail because there were many, so it could be one of the e-mails.

Q. Sir, I meant the last e-mail you and I just looked at. All I'm trying to do is orient time here. We're one month after the e-mail we just looked at?

A. That's right.

Q. You say -- your e-mail issue is "broken appointments," and this paragraph is the one I wanted to focus you in on. "Yesterday, I had a meeting with my doctors and discussed with them about their performance." And you did that regularly, did you not, sir?

A. I would say on a monthly basis, but we were working as a team, so there would be casual encounters. Yes, we used to look at how much each day. Yes, we used to do that.

Q. You would bring them into your office and say, "Here's how much I made. Here's how much you made, and what you're making is not acceptable." That's part of what you did with them, right?

A. No.

Q. Let's see what you said to Mr. Roumph. "Dr. Dmitri," and that's Dr. Dimitri Filostrat and he's a pediatric dentist, right?

A. That's right.

Q. Greater training and experience than you had at that time, fair to say?

A. No.

Q. Okay. "Dr. Dmitri had made 1,591 in a day when Dr. Naveed and Dr. Koury had made approximately 3,400 each and I had made 4,250. He is consistently underperforming and yesterday I was very firm and told him that this was not acceptable."

So am I right that you wanted the boss, one of your bosses, to know that you were telling -- first of all, that you were using the production per dentist statistic; that's what you were using right here, sir?

A. It's one of the many.

Q. We're talking about this one at the moment?

A. That's right.

Q. I want to talk about your use of the production per

dentist statistic?

A. That's right.

Q. You heard Mr. DeRose's testimony that it's the number one trigger point for fraud, right?

A. It's his opinion, right.

Q. You heard him say the danger of production per dentist is using it to cause doctors to do more procedures, that that's fraudulent?

A. This is his opinion.

Q. You disagree with it?

A. Yes, I think that -- I use it as a parameter just to see -- like Dr. Dmitri was an elderly man, 68 years old, retired ten years ago, pediatric dentist, ten years ago. He was retired in Florida. His house was hit by tornado. We give him a job and he was not working because he was very elderly and it was not fair for the other dentists that he's not working and all the other dentists that he is not working have to see always those uncooperative children. It's not acceptable.

Q. Dr. Aman, do you think it's within Dr. Filostrat's domain to decide as a pediatrically trained dentist what his patients need in terms of treatment? Do think that is within his domain? Let me finish. Is it within his domain or not?

A. It's not about domain --

Q. Sir, can you answer my question?

A. No.
Q. You can't?
A. When it comes to treating the patients, yes.
Q. Okay, so let's stop right there. You agree that Dr. Dimitri Filostrat, who is a pediatric dentist, it's his discretion as to how much treatment the children he sees, how much they need, that's his decision, right, sir?
A. You are not representing it. No.
Q. It's not his discretion?
A. It's his discretion when it comes to treating the children. It's not in his discretion that he sits in his office just because he's elderly and retired ten years ago.
Q. Did you say anything to Mr. Roumph about him sitting in his office, reading the newspaper, surfing the Internet, drinking coffee; is that what you're talking about?
A. I have many other e-mails I sent but you're not producing it.
Q. I'm asking you about this one, sir. What you told Mr. Roumph was that you were very firm and that his production, even though you say it's his domain, was not acceptable, and that's what you were doing with the dentists when you became the lead, right?
Mr. STEVENS: Objection, form.
THE COURT: Overruled.
Mr. STEVENS: Objection, mischaracterization.

THE COURT: Overruled.

Q. Doctor Khan --

Mr. STEVENS: Objection, badgering the witness.

Mr. LEYENDECKER: That's fair. I won't do it again. I can get exercised from time to time because I don't like it when people come in here and do things that I think are not --

Mr. McPHILLIAMY: Objection.

Mr. STEVENS: Objection.

Q. Let me move on. It's fair to say, Dr. Khan, you were engaged in the very conduct that Mr. DeRose, the top manager, says is the number one trigger point for fraud, weren't you?

A. No.

Q. Let me hand you Exhibit 714. Dr. Khan, do you recognize Exhibit 714 as an e-mail exchange you had with Mr. Roump in August of 2006?

A. Yes.

Mr. LEYENDECKER: Your Honor, the Plaintiffs would offer Exhibit 714.

Mr. McPHILLIAMY: No objection.

THE COURT: Okay. Exhibit 714 received.

(Whereupon, Plaintiff's Exhibit Number 714 was received in evidence)

Q. Would you like to take a moment to read the e-mail, Dr. Khan?

A. Yes.

Q. Okay. This loan you got to go to your two-year program at Boston, you at one point in time were trying to get whoever it was that made that loan to forgive part of it in exchange for your work in treating Medicaid children; is that fair to say?

A. It was the Federal Government, yes.

Q. And you wanted this -- let's look here at the bottom of the e-mail to orient ourselves by doing that. "Mike," that's Mike Roumph, right?

A. That's right.

Q. "I have been told by NHSC," and who's NHSC?

A. National Health Services Corporation.

Q. Okay. Is that who made the loan?

A. That they would pay off part of my student loans if I worked in an underserved area and helped underprivileged children, yes.

Q. And how much were your student loans?

Mr. McPHILLIAMY: Objection, relevance.

THE COURT: Sustained.

Q. Okay. You want Mike to know that you'd been told by NHSC that the application is about to be approved. Am I right that you needed to stay with the employer that treated Medicaid children for at least two or three more years?

A. That was the contract with the NHSC, yes.

Q. And you were looking for some kind of commitment to feel comfortable that if you entered the program you would be able to keep your job at Syracuse; that's what is going on here, right?

A. That's not true.

Q. Let's look at the second page of this e-mail. You say down here under this -- let's just start at the top: "My point in this e-mail is that, as you know, I have a contract with Small Smiles 'til 2010. I am doing my very best for this office but for any reason if you find a better alternative to the lead position, then I would expect you to have me in the capacity of an associate dentist." You go on to say, "but I would not be able to move from Syracuse at least until October 2009 when my contract with NHSC is not fully completed." I'm not sure I understand that lingo there. Is the point of what you're saying here is that you couldn't -- well, let's get right to this: "In case I leave before that date," and that date is October of '09, right?

A. That's right.

Q. So we're here in August of '06, "so in case I leave within three years, either I have to play" -- I assume that means pay?

A. Pay, right.

Q. "I have to pay a huge penalty or they will send me to a very, very remote area, which I would not like to go."

A. Part of the contract was that if --

Q. I didn't ask you a question, sir. Am I right --

A. Yes.

Q. -- that if you left Small Smiles before three years you'd have to pay a huge penalty or to get the debt forgiven, you'd have to go somewhere you didn't want to go. Is that what you're communicating to Mr. Roumph?

A. I wanted to finish my contract here, obviously.

Q. And let's go back to that first page and see what it is that Mr. Roumph told you. Come down a little bit. "Dr. Yaqoob, you have done a great job for us as lead dentist." Do you see that?

A. Yes.

Q. And let's look at the assurance that he gives you. He says, "If you continue to operate the Syracuse clinic like you have so far, we have every intention of keeping you as lead dentist." And you understood that what he was saying was, keep turning over those stones so we get the production that we're expecting for Syracuse, right?

A. A mischaracterization.

Q. He didn't say, "We've got you in a contract; we promise we're going to keep you as a lead for three more years." What he says is, "If you keep operating it the way you have so far, you've got nothing to worry about," right?

A. This is your interpretation of his e-mail.

Q. Okay. You know that FORBA had a treatment philosophy and that that treatment philosophy included not referring patients out and instead strapping the kids down to papoose boards, right?

A. Absolutely wrong.

Q. Let's look at Exhibit 711. Dr. Khan, can you identify Exhibit 711 as an August 7th, 2007 e-mail from you to Jacob Kochenberger, Ken Knott and Al Smith?

A. Yes.

Mr. LEYENDECKER: Plaintiffs offer Exhibit 711.

Mr. McPHILLIAMY: Objection, irrelevant.

THE COURT: Overruled.

Mr. FIRST: May we approach?

THE COURT: Yes.

(Discussion off the record at the bench)

MR. LEYENDECKER: Is Exhibit 711 received, your Honor?

THE COURT: Yes, Exhibit 711 received.

Mr. LEYENDECKER: Thank you.

(Whereupon, Plaintiff's Exhibit 711 was received in evidence)

Q. Dr. Khan, at some point in time did the Syracuse clinic lose a doctor or two and was in need of additional doctors?

A. We -- most of the six years that I was there we were

four dentists. At times we were three dentists and at times we were five dentists, so I don't recall specific times.

Q. You don't recall?

A. I said there could be times when we were three, times when we were five dentists, but most of the time we were four dentists.

Q. Let's look at the second page of this e-mail, which actually begins -- can you scroll up to the bottom of the first page, please? This e-mail which we're about to look at on Page 2, down a little bit, is from you to Jacob Kochenberger on August 7th, 2007. Do you see that?

A. Yes, sir.

Q. Now focus on the second page. "Hi, Jacob. We need to hire a dentist A.S.A.P. for the following reasons." So am I right that Syracuse needed a dentist A.S.A.P. back at this time?

A. I need to read the reasons. It may refresh my memory.

Q. You need to read the reasons to know whether Syracuse needed a dentist A.S.A.P.?

A. I can't recall from this one sentence. I have to read the whole e-mail to refresh my memory of what period of time it was relating to.

Q. Do you want me to show you the date again? August 7th, 2007. Here's the date, to refresh you on the context.

A. Very hard to sit here and think that at that

particular month we were short-staffed. I don't remember.

Q. Let's see what you said over there on number three. "Dr. Grace" -- and that's Dr. Grace Yaghmai, one of the dentists who ultimately worked at the clinic?

A. That's right.

Q. But at this point in time was not yet employed there?

A. I don't recall.

Q. "Dr. Grace may have hung up on money, but I think we are losing more money," and "we" is the clinic, right?

A. I would assume.

Q. "We are losing more money by not having enough staff than paying a little extra to hire new people." So your view was the clinic was losing money and should pay a little extra because you need dentists A.S.A.P at this time?

Mr. STEVENS: I'm going to object to the characterization.

THE COURT: Overruled.

A. Because so each dentist had two assistants, so if you were paying staff for four dentists and I was having three dentists, of course we were losing money because I had to pay the dental assistants anyway.

Q. Okay. Let's go see what you told Mr. Al Smith and Ken Knott at the top of this e-mail. Now, you had been talking also in addition with Dr. Grace and Dr. Kahan and Dr. Lee about the need to fill the Syracuse vacancy on the dentist

front, right?

A. That's right.

Q. "I did not deny offers to them. They both did not look interested for a variety of reasons, especially they did not feel comfortable treating very young children, and Dr. Kahan was not a great fan of papoose board, as you know. He said he would like to refer patients out if they were not cooperative." Am I right, Doctor Khan, that the decision of whether to use the papoose board or whether to refer a patient to a more qualified dentist who can treat without using a papoose board, that that's an individual decision that belongs to the dentist?

A. Yes, their individual decision, but one dentist cannot say, "I'm not treating little children; I only want to treat older patients." It's not fair to the other dentists.

Q. Do you think a dentist ought to be forced to treat children in ways that he doesn't think were appropriate or he doesn't feel comfortable doing?

A. If the dentist is coming for interview and he tells me that he wants to only see older patients, "I'm not going to see uncooperative young children," I'm not going to hire that dentist because it's not fair for me; it's not easy for me to treat uncooperative children day in and day out, and if somebody can only see older patients, I think it's not fair to the other dentists working there. Of course I would not

offer the position.

Q. So you're not interested in hiring a dentist that's going to exercise their own judgment about what is the appropriate way a young child should be treated and whether that dentist should be referring to someone that's got greater skills than they?

A. Number one, this dentist --

Mr. STEVENS: Objection, mischaracterization.

THE COURT: Overruled.

THE WITNESS: Can I just answer?

THE COURT: You can.

A. Number one, this dentist was working with us two-and-a-half months because she was selling her house in Cortland, was moving to Arizona. So while she was waiting for the house deal, she worked with us only two-and-a-half months and didn't want to do anything, did not even know if there were any places that the kids could be referred to, so she just presumed she could pass the little, uncooperative children to someone else. "No, we're getting referrals from other dentists; we have no place to refer to." You can't do this. So any time the child becomes uncooperative, we can't refer. We can't just do that.

Q. Did I just hear you say there was no place to refer?

A. Yes, of course.

Q. So was Dr. Bonds lying when he took that stand and

said he gave every parent, including Jeremy's mother, the option of being referred to another practitioner? Who's lying, you or him?

Mr. HULSLANDER: Objection.

THE COURT: Overruled.

THE WITNESS: Can I --

THE COURT: Yes.

Q. Who is lying, you or him?

A. None of the two. The thing --

Mr. STEVENS: May I ask the witness finish his answer?

Mr. LEYENDECKER: He answered it.

THE COURT: He answered "none of the two."

Q. Okay. You go on to say -- and by the way, whatever cover story we discussed about Arizona, did you put any of that in this e-mail?

A. Again, I told you, we communicated so many e-mails, but you're only bringing just one e-mail and which is out of context and within this e-mail --

THE COURT: You're going to have to slow it down.

A. The thing is we communicated with the management company on a regular basis. He does not bring all these e-mails. He brings one e-mail, highlights one sentence, which does not really reflect the whole -- it's not

referenced to the context. So you don't have obviously those e-mails. The company knows she was going to Arizona and she was working only two-and-a-half months and you can pull the records. She was only working two-and-a-half months.

Q. Your lawyer is free to put whatever records he wants to in front of this jury and we'll have a look and see what they say, right?

A. Sure.

Q. Well, we know you said in this one, you're talking about the two guys when you had an A.S.A.P. need, "at this point I want to bring anybody on board as long as they are willing to work in a busy office like ours and believe in our philosophy." And our philosophy is a reference to the FORBA philosophy, isn't it, Dr. Khan?

A. No.

Q. Okay. So it's a reference to the Syracuse clinic philosophy?

A. Yes, we were working with these children and nobody could just pick and choose children based on their level of cooperation because some dentists would say, "I want to see only older patients." No, you have to see whatever comes. "You have to see every child if you want to work in our practice. If you don't want to see young kids, don't work here."

Q. The Syracuse clinic philosophy was "when we have an

uncooperative child, we strap him down and go to town" as opposed to sending him to a dentist who has the ability and interest in taking time to get the cooperation so they're not scared, right?

A. Wrong --

Mr. STEVENS: Objection.

Q. And you didn't want that in your clinic?

A. Not true.

Mr. STEVENS: Argumentative.

THE COURT: Overruled. Was there an answer, I'm sorry?

A. It's not true.

Q. Let's switch gears and talk about what you did with Jeremy Bohn.

A. Sure.

Q. Am I right you have no memory of Jeremy?

A. Yes.

Q. Yes, you do or that's true?

A. I don't have any memory.

Q. Okay. And you don't have any memory of any discussion with Jeremy or Jeremy's mother or father?

A. I don't recall.

Q. I don't know what that means.

A. No.

Q. Okay. Am I right that you're relying solely on the

Small Smiles dental record regarding what you did or didn't do with regards to Jeremy?

A. That's right.

Q. And if you understand, and it was your practice to write down anything that was important relative to your assessment of the child or what you told the parent or how you treated the child, it was your practice to write those kinds of things down in the chart?

A. Say it one more time, please.

Q. Was it your practice to accurately document in the chart what it is you were doing and what you had talked to the parents about?

A. Yes, it was our custom and practice to document every pertinent and significant information in the chart which was significant in rendering the treatment of the child, yes.

Q. Okay. And on that subject, am I right that it was not the clinic's practice to go get the records from the pediatrician and the records from the dentist and the records from Medicaid, get all those records before they figured out what they did or didn't want to do with those kids? That wasn't your practice, was it?

A. I don't understand. Say it one more time, please.

Q. Well, some doctors, you go see a doctor and the doctor says: "Hey, can you have your general practitioner send me those records. Can you have someone send me those X-rays,

this other person send this?" You understand that, right?

A. Your question is confusing. Can you simplify it, please?

Q. Have you ever been to a doctor in your life, sir?

A. What's that?

Q. Have you been to a doctor?

A. I have, yes.

Mr. STEVENS: Objection, relevance. He's talking about what physicians do and the objection is to relevance.

THE COURT: I'm going to overrule it because we don't really care about his doctor visits but I think he's trying to get him to understand the question in a different way because he said he didn't understand it.

Q. Let me try this again. Was it your practice before you decided what treatment a young child needed, was it your practice to get that child's parents to go get the pediatrician's records so you could review those, before you decided what the kid needed? Was that your practice?

A. I apologize, if this is a repetition. You have already explained three times and I'm still confused. I really do not understand it.

Q. Let me ask you this way: To the extent that somebody in Small Smiles thought it was important to know what other doctors or dentists had done with Jeremy, to the extent they

thought that was important, you would expect to find that in a Small Smiles file, right?

A. That's right.

Q. Now, am I right that one of the most important aspects of child behavior guidance in dentistry is controlling pain?

A. Sure.

Q. And that if a child experiences pain during a dental procedure, the child's future as a dental patient could be damaged?

A. That's right.

Q. Is it also important, Dr. Khan, for a dentist to reduce discomfort and keep it to a minimum and control pain while you're drilling on a young child's teeth?

A. Sure.

Q. Preventing pain -- is it fair to say that preventing pain can build trust between a dentist and a young child?

A. Absolutely.

Q. What about the opposite? Do you think inflicting pain can create a lack of trust?

A. Yes.

Q. Okay. And as a dentist, you don't want to do things that are going to -- that's going to make it more likely than not that a young child won't want to come back?

A. Sure.

Q. You don't want to inflict pain on him unnecessarily,

do you?

A. Of course not.

Q. Because nobody is entitled to unnecessarily inflict pain on patients, are they?

A. Nobody would ever do that.

Q. Don't you mean nobody should ever do that, sir?

A. Nobody should ever and will never do that, to inflict pain on little children.

Q. Am I right that preventing pain not only can build trust between a child and a dentist but that it can promote a positive attitude toward dentistry and dental health?

A. Sure.

Q. And is it your belief that of all the drugs available in medicine, local anesthetics are the safest and most effective for preventing, controlling and managing pain?

A. They are safe but they have some serious risks, and which I need to explain to the jury if you would allow me.

Q. You'll have an opportunity to say whatever you want to them in response to your lawyer's questions. I would like you to look at Page 312 of your deposition at Line Number 6.

A. What was it, 326?

Q. 312, sir, Line Number 6. Are you with me, sir?

A. Yes.

Q. Line Number 6 at the end, where the question begins: "Of all the drugs that are available in medicine, local

anesthetics are the safest and most effective for the prevention and management of pain. Do you agree with that?" And your answer was?

A. Yes.

Q. Am I right that you're not aware of any authorities or any textbooks that say it's appropriate to not use local anesthetics with a child when you're drilling on them and giving them fillings?

Mr. STEVENS: Objection, form.

THE COURT: Overruled.

A. I'm aware that there are many textbooks that -- and in our clinical judgment, if the cavity is very superficial in enamel, you don't have to numb the child; you don't have to give injection knowing the risks of the injection.

Q. That's not what you said the first time, is it?

Mr. McPHILLIAMY: Objection.

A. I don't recall.

Q. Let's look at Page 309 of your deposition, beginning on Line Number 3 -- are you with me, sir?

A. Yes, sir.

Q. The question was: "Are you aware of any written authority dealing with local anesthetic that says that it is appropriate to not give a local to a child when doing a filling?" And your answer was: "Depends on the clinical situation." Question: "I'm asking whether you know of any

written authorities, any textbooks?" And your answer was?

A. I could not recall at the time.

Q. You don't know of any was the next question, right?

A. I could not recall, I said. I could not recall.

Q. So now you're telling the jury you have recalled some authorities and textbooks that say it's okay to drill on a young child without local anesthesia; is that your testimony?

A. It's my custom and practice that if there's a small cavity in a little children, yes, they don't need to be numb. They don't need to be numb.

Q. Do you agree with Dr. Bonds that to properly utilize a local anesthetic takes about seven to ten minutes from the time when you first put the topical on to the time when the patient is going to be numb enough that you can drill on them?

A. That's a fair statement.

Q. Okay. And that a prudent dentist is going to wait until he's confirmed that the local is, in fact, doing its job?

A. Sure.

Q. Okay. Do you agree that a prudent dentist would let a parent know if they intended to drill on their young child without using local anesthetic?

A. Yes.

Q. And am I right that you believe you can tell if a

cavity is superficial by looking at the X-rays?

A. X-rays is part of the tool. It's not the only tool. You have to look at the X-rays as well as clinical judgment, and clinical judgment prevails in most of the situations.

Q. My question -- did you understand my question or did I confuse you?

A. You can say it one more time. I'll try.

Q. Sure. Am I right that you believe that you can tell if a cavity is superficial by looking at the X-rays; is that your belief?

A. Not always.

Q. Let's look at Page 292 and see what you say in your deposition.

A. 292?

Q. 292, yes, sir, Line Number 16.

Mr. STEVENS: What page is it?

Mr. LEYENDECKER: 292, Line Number 16.

Q. Are you with me, sir?

A. Yes, sir.

Q. Now, the reason I started you there, Dr. Khan, is because you have to get a little oriented before you see the answer to your sworn testimony. That's why I start you a little early. What you're being asked about here is whether, in your view, you can see if a cavity is superficial by looking at an X-ray, right?

A. You can't tell only looking at the x-rays.

Q. Question, Line 16: "If you're going to use a rubber dam or cut through tooth structure, doesn't that typically cause pain and discomfort?" And your answer was, "Depending on the size of the cavity. If the cavity is very superficial, then there is no pain." Question: "If the cavity is very superficial? Answer: "Yes. Question: "How do you know?" And your answer was: "By clinical observation that you can check; on X-rays you can tell." That was your sworn testimony, right?

A. That's what I said now, by clinical observation plus X-rays. You cannot tell on just one thing. X-rays is part of the tool. Clinical examination is also important, so this is just what I said.

Q. Okay. Am I right that on January 21st, 2008, you did a two-surface filling on tooth number L for Jeremy?

A. I'd have to look at the chart.

Q. Let me get you 199. I'll flip to the page for you, sir. I've got you oriented on the January 21st, 2008 operative report from Jeremy's Small Smiles records. Can you see that, sir?

A. Yes, sir.

Q. Does that refresh your memory that you did a two-surface filling on tooth L on that day?

A. That's right.

Q. Now, tooth L had been filled once before at Small Smiles, right?

A. I believe so.

Q. That was one of the teeth that Dr. Bonds had filled when he was drilling on him with no local while he was strapped to a papoose with his heart racing at over 200 beats per minute, right?

Mr. McPHILLIAMY: Object to form.

Mr. STEVENS: Objection.

THE COURT: Overruled.

Mr. STEVENS: Objection, mischaracterization.

A. I think this tooth has been treated before.

Q. By the way, you do -- it's your practice to review the chart prior to you working on a child to familiarize yourself with what's gone on before, isn't it?

A. Absolutely. That's our custom and practice, what we do on every patient.

Q. And you had done that before you treated Jeremy on the 21st of January?

A. We always do it on every patient.

Q. And you knew that on October 11th, 2006, Dr. Bonds had done a filling on the occlusal surface of tooth L, right?

A. Yes.

Q. That's the biting surface, the occlusal surface?

A. That's right.

Q. And you knew from your review of the records that he had done so while he had Jeremy restrained with a papoose?

A. He was not restrained. He was put in protective stabilization.

Q. Flip to Page 452 of your deposition, shall we, sir?

A. What's the page number?

Q. Page 452, beginning on Line 7.

A. Yes, sir.

Q. If you go to Sheet 9, Dr. Khan, of Exhibit 199, that's the October 11, 2006 operative procedure report; are you with me?

A. Yes, sir.

Q. And you say: "October?" I say: "October 11, 2006." Answer: "Yes." Question: "On that day did Dr. Bonds perform an occlusal surface filling on tooth L?" And your answer was: "Yes, this is what it says here." And by that, you're looking at that record, interpreting what it means and answering my question, right, sir?

A. That's right.

Q. "And did he do so" --

Mr. STEVENS: May we approach?

THE COURT: Yes.

(Discussion off the record at the bench)

Q. Okay, Dr. Khan, on Line 19, and we're talking about an occlusal surface filling that Dr. Bonds performed on Jeremy

on October 11th. The question was: "And did he do so while he had Jeremy restrained with a papoose?" And your answer was?

A. This is what it says here, but before that, we had back and forth a few times.

Q. Sir --

A. Can I --

Q. No, you cannot. Okay. You'll have a chance to tell whatever story you want to tell when your attorney asks you questions on --

Mr. McPHILLIAMY: Objection.

Mr. STEVENS: Objection, move to strike.

Q. Question: "And did he do so without the use of any local anesthesia?" And your answer was: "This is what it says here." "And did he do so while Jeremy's heart rate exceeded 200?" And you looked at the records and said: "That's what they say," right?

A. Yes.

Q. So we're talking about the tooth that had already been filled by Dr. Bonds, and am I right that when you went to go to do two surfaces, you used a drill to remove the filling that Dr. Bonds had put in there?

A. When I identified this tooth, this is the only time that this child's cooperation, Jeremy's cooperation had been two to three, which is positive --

Q. Dr. Khan, do you remember my question?
A. Yes, I do.
Q. What was it?
A. Did I drill the tooth without lidocaine, I believe that's what you said.
Q. No.
A. I'm sorry.
Q. Because we know you did that and we're about to talk about it, but I first want to establish that you removed the filling that Dr. Bonds had done by using a drill, and that's what you did, right, sir?
A. I used handpiece.
Q. Let's look at Page 438 of your deposition.
A. 434?
Q. 438, Line 3. Are you with me?
A. Yes.
Q. Question: "How did you remove the filling that was on L, the one-surface filling on L, before you performed a two-surface filling on L, with a drill?" And your answer was?
A. With a drill, yes. Laymen would call it a drill. We call it handpiece.
Q. No question it was a drill?
A. It was a handpiece. Whatever you call it, this is a tool that we remove the old filling with.

Q. The only reason I'm asking about this is we heard this, "Oh, we use a spoon for this, a spoon for that." I want to be clear. You used a drill when you removed the filling, didn't you?

Mr. STEVENS: Objection, there's no claim that a drill is used to remove -- a handpiece is used -- I'm sorry, a spoon is used to remove a silver amalgam. He's mischaracterizing.

THE COURT: Overruled.

Q. Dr. Khan, does the standard of care following -- and you're familiar with the concept of standard of care, aren't you, sir?

A. Of course.

Q. That's a concept that includes what a reasonably prudent dentist would do under a similar situation?

A. That's right.

Q. And so my question is: Does the standard of care require a dentist to use local anesthesia if there's a possibility this patient might feel pain or discomfort through the use of a drill?

A. Standard of care is a subjective term. No. It depends on the clinical situation and the clinical judgment of the dentist who is treating the child. He has to weigh the risks and benefits.

Q. Did you understand my question? I'm asking you if the

standard of care requires if the dentist believes there's a possibility the child might experience pain through the use of a drill, does the standard require him to use a local anesthetic?

Mr. STEVENS: Objection.

Q. That's our situation that I'm asking you about.

Mr. STEVENS: Objection.

THE COURT: Overruled.

A. Yes, if the dentist thinks it's going to cause pain, he would use lidocaine, yes.

Q. And that's what a prudent doctor would do if they felt there was a possibility the child might experience pain when they were being drilled on, right?

Mr. STEVENS: Objection to possibility.

A. If a dentist thought it was going to cause pain he would use lidocaine, yes.

Q. Based on your education and experience and understanding of the accepted medical literature, are patients more likely than not to feel discomfort when a dentist penetrates into the dentin of the tooth?

Mr. McPHILLIAMY: Objection to form.

THE COURT: Overruled.

A. No.

Q. Okay. I just introduced a term there, and I want to just spend a minute before we get down to the brunt of it.

What are the surfaces of the tooth, sir? Let's start with the first one.

A. Occlusal surface.

Q. Bad question. I know there are five surfaces of the tooth. What is the outermost surface of the tooth, whether it's occlusal or distal or lingual or buccal? What's that outermost surface referred to as?

A. Enamel.

Q. Okay. So the outermost surface is enamel. What's the next surface beneath the enamel?

A. Dentin.

Q. And what's beneath the dentin?

A. Pulp chamber.

Q. Pulp chamber?

A. Pulp chamber.

Q. And how about on the other side of the pulp chamber?

A. Say it again.

Q. What's after the pulp chamber?

A. Then you are going down and -- pulp chamber is -- there's pulp tissue inside the pulp chamber.

Q. Pulp tissue. Do we have anything after pulp tissue?

A. Say it again.

Q. Do we have anything after pulp tissue?

A. I don't know what you're referring to, but pulp tissue consists of different things.

Q. We're talking about the layers of the tooth and the tooth structure and -- let me try it this way: That's not an apple; that's supposed to be a tooth, okay? Is this the enamel right here?

A. Yes.

Q. Okay. And the dentin is what's inside, just inside the enamel?

A. Not just inside. You go deeper. It's a thick layer of enamel and then dentin.

Q. How thick is that layer of enamel on a baby tooth?

A. Depending on the area of the tooth structure. It could be 1.5, could be 2 millimeters, could be more.

Q. Now, is the enamel on baby teeth thicker or thinner than enamel on permanent teeth?

A. Compared to permanent teeth, thinner.

Q. Thinner, okay. So let's just make a note of that down here. Thinner on baby teeth. Am I right that this 1.5 to 2 millimeters you just described is the approximate thickness of enamel on a permanent tooth?

A. No, it depends on the cusp area of the baby tooth; it could be even on the primary tooth. It could be on the primary tooth as well.

Q. Okay, let's just do this: You say 1.5 to 2 millimeters?

A. Yes.

Q. And the dentin, how thick is the dentin relative to the enamel?

A. About 2 to 2.5 millimeters.

Q. 2.5?

A. 2 to 2.5.

Q. I'm going to try this, and I may not do good, but -- I realize this isn't exactly the size, but is this area that I just described the pulp chamber?

A. That's right.

Q. And then the pulp tissue is inside the pulp chamber, right?

A. No, no, you completely mess it up now.

Q. Well, come on down. Come on down. Come on down, Dr. Khan. I don't want to mess it up. Draw the arrow where the pulp chamber is.

A. All right, this is -- you have here... this is enamel (indicating). You have to put dentin.

Q. I thought the dentin was everything inside the enamel before you got to the pulp chamber?

A. Say it again.

Q. I thought the dentin was everything inside the enamel before you get to the pulp chamber?

Mr. STEVENS: Could we finish drawing before --

Mr. LEYENDECKER: I'll try.

Q. Dr. Khan, is the pulp tissue in here?

A. Yeah.
Q. And the pulp chamber is what houses the pulp tissue?
THE COURT: You're going to need to keep your voice up because Val needs to hear you when you're speaking. You're facing the board.
Q. And the dentin is the area inside the enamel?
A. No, the enamel covers the tooth outer area. There's enamel layer and then there is dentin layer.
Q. Right.
A. And then there's pulp tissue.
Q. Right. So the first layer inside the enamel is the dentin area, right?
A. The first area --
Q. The first layer inside the enamel is the dentin?
A. Yes, under the enamel is the dentin layer.
Q. And we know that adult enamel is 1.5 to 2 millimeters?
A. Yes, more or less.
Q. And baby tooth enamel is thinner than this?
A. No, it depends on the cuspal area. It could be the same.
Q. Okay. Do you recognize, Dr. Khan, that the width of a piece of notebook paper is about 1 millimeter; did you know that?
A. I can't tell.
Q. And just to make sure I've got your testimony right,

your testimony to this jury is that it is not widely accepted that patients feel pain once the drill penetrates the enamel and gets into the dentin, that there's no literature that supports the concept that a patient would feel pain or discomfort once you drill --

A. You are mischaracterizing.

Mr. STEVENS: Object.

A. If you're -- we have a tool called spoon excavator. It's like a little spoon, and you remove the decay from the dentin. No, you don't feel pain, no.

Q. Spoon. What about a drill, the way you removed the filling on Jeremy's tooth L?

A. Okay, removing filling is one thing. Removing decay under the filling is a totally different thing. It's totally -- two different things.

Q. I'm confused. Let me see if I can ask it this way: Is it more likely than not based on your education, experience and whatever medical literature you've read in your life, that when a dentist is using a drill and they penetrate the enamel and get into the dentin, is it more likely than not that a patient is going to feel discomfort?

A. With a spoon --

Mr STEVENS: Objection.

Q. I asked about a drill, sir.

A. With a drill on enamel, no.

Q. Your testimony is not -- that if a dentist is using a drill to get past the enamel and into the dentin, your testimony to this jury --

A. I did not say this. I said through the enamel. I did not say dentin. You are putting words in my mouth I did not say.

Q. I'm just trying to get you to answer a question that is plainly obvious. And that is, if a dentist uses a drill to get past this 1.5 to 2 millimeter area of enamel and gets into the dentin, the literature says it's more likely than not that a patient is going to feel pain and discomfort?

Mr. STEVENS: Objection.

Q. That's true, isn't it?

Mr. McPHILLIAMY: Objection to literature.

Q. Isn't that true?

A. Can I explain?

Q. No, whether it's true or not.

THE COURT: Doctor, let me just ask you the question that I think counsel is trying to ask. Once you get past the enamel to the dentin, is it more likely than not that using a drill, the patient would feel pain?

THE WITNESS: Depends on the case. Depends -- he's putting a loaded question and he wants me to answer yes or no. This is not the way. If there is a decay in the dentin, even if you are cleaning it with a slow-speed

handpiece, no, there is no pain. You can use slow-speed handpiece. He's not saying handpiece. There can be slow speed; there could be high speed. If you're using slow speed, no, especially if there's decay, no.

THE COURT: So the answer is no.

THE WITNESS: If I said no, he might say I said high speed, so I wanted to make sure the jury understands it's not high speed.

BY MR. LEYENDECKER:

Q. Let me ask it this way: Is there any circumstance -- so if I get you right, if you're using a high-speed drill and you penetrate the enamel, then you know very well the patient is more likely than not going to feel pain; true or false?

A. That's right.

Q. Okay. And that's exactly what you did without local anesthesia on Jeremy and exactly what your colleagues did, right, sir?

A. I have never done that and we'll never do this on any patient.

Q. Let me hand you Exhibit Number 736, Dr. Khan. Exhibit 736 are some subsequent treating records of Jeremy Bohn from -- tell you what. Before we go to 736, let's look at the Small Smiles X-ray from November 12th 2007. See if you can find that in your stack. November 12, 2007, 199. Okay. Can you brighten that up? That's pretty dark. That doesn't

work either. Let's see... where are the originals? The original is 200. Does somebody know where the original chart is, Exhibit Number 200? Is there any way to display this up on the screen?

Sorry. Let me see Exhibit 199, Dr. Khan. Let's try it this way.

Mr. LEYENDECKER: Your Honor, may I examine the witness from over here?

THE COURT: Yes.

Q. Okay. Dr. Khan, we're looking at the X-rays taken from November 12th, 2011?

A. That's right.

Q. Right?

A. Yes.

Q. And these X-rays show the teeth that Dr. Bonds and Dr. Aman had done fillings on without using any local anesthetic, right? They show those teeth?

A. I think so, yes.

Mr. STEVENS: May the record reflect that you're looking at a photocopy on white paper, not the original?

Mr. LEYENDECKER: I think it's pretty obvious I have a piece of paper.

Mr. STEVENS: But it's not obvious to the record unless we say so. Thank you.

Q. Dr. Khan, I want you to do me a favor and just put a

letter. I'm going to start here with tooth J, right?

A. Yes, sir.

Q. I want you to do me a favor and mark teeth J, K and L. Mark teeth A, S and T. Okay. Now, any chance that Elmo is going to come to life? Let's come over here -- is there a focus in here? Okay. That's as good as I can get it, sir. I know it's not the original and we can dig through that box and get the original out if you'd like, but what I want to ask you, this tooth K -- first of all, this is L, right?

A. That's right.

Q. And the bright white spot we see over there is the filling?

A. That's right.

Q. That's the filling you removed with the drill, right?

A. That's right, with the handpiece, yes.

Q. Did you penetrate the dentin with the drill when you removed that filling?

A. No, when we remove the filling, we remove it with a handpiece, we call it. We clear the filling, while removing the filling because the filling is brittle, like a piece of glass. So while you are removing it, it's just like a chunk of it is coming out, so -- no, there's no point you would be necessarily touching the tooth removing the old filling.

Q. How about tooth K? did Dr. Bonds penetrate the dentin when he performed that filling on tooth K?

A. Looking at this X-ray, it looks like the filling might be in the dentin.

Q. How about same thing on tooth L? The filling is in the dentin; isn't it, sir?

A. It's hard to tell on the L. It's kind of obvious on the -- if I had to err on the side of caution, K, probably yes. L, very hard to tell on this.

Q. Okay. Did you penetrate Jeremy's dentin when you put a two-surface filling on tooth L the day you treated him?

A. I can't tell from looking at these X-rays, but --

Q. Let's look at Exhibit 736. These are Jeremy's Bohn's records from Rome Family Dental.

Mr. LEYENDECKER: Plaintiffs would offer Exhibit 736, your Honor.

Mr. McPHILLIAMY: No objection.

Mr. STEVENS: No objection.

THE COURT: Received, 736.

(Whereupon, Plaintiff's Exhibit 736 was received in evidence)

Q. Do you remember me asking you about this in the deposition and asking you to put an L there on the tooth you used the drill on -- did you mark tooth number L on these subsequent X-rays?

A. These X-rays?

Q. Yes, sir.

A. I don't know if that's my handwriting there.
Q. Do you want me to show you your deposition?
A. I don't see --
Q. Do you remember your L there?
A. This could be my L. I don't know the L, yes.
Q. You don't remember me asking you about this in your deposition?
A. Yes, you did.
Q. Okay. This is actually better reference. That's the same number J that we just looked at at the top, right?
A. Yes.
Q. And that's K?
A. Yes.
Q. No question Dr. Bonds penetrated the dentin when he did this filling on K, right, sir?
A. It looks like the filling might be in the dentin.
Q. Might be in the dentin. Same thing on J, right, in the dentin?
A. Hard to tell, but could be.
Q. Your testimony is that filling might be less than 1.5 millimeters?
A. I can't tell because it's a photocopy, plus you have -- it's really difficult to tell. I have to look at the originals to see. It's hard to tell. As a clinician, it's hard looking at real X-rays, leave alone for the copy of the

X-rays, and then take the magnification of the x-rays, so it's really hard to tell.

Q. Okay. This over here, Dr. Khan, that's tooth L, right?

A. That's right.

Q. And we know that you did a two-surface filling --

A. Yes.

Q. -- occlusal on top. And tell the jury what the surface is between the teeth that you drilled and filled?

A. I did D.O. filling on this one, distal occlusal.

Q. That's right. After you removed it with a drill, you drilled out more to do the occlusal filling and then you drilled out the distal side of the tooth to put a filling there, too, right, sir?

Mr. STEVENS: Objection, mischaracterization.

THE COURT: Overruled.

A. This is, again, not a yes or no question. It's a mischaracterization. I can't say yes or no. I have to explain so that the jury understands what I mean.

Q. Did you give Jeremy any local before you drilled out tooth number L with a drill?

Mr. STEVENS: Objection.

A. I did not give any lidocaine on this with it.

Q. Did you give Jeremy any local before you drilled out tooth L and then drilled some more so you could do a

two-surface filling, sir?

A. As I said, I did not give lidocaine on this visit.

Q. Okay. And can you tell the ladies and gentlemen of the jury whether you penetrated the dentin on tooth L when you put that filling on his tooth?

A. Of course I can explain to them, yes.

Q. Okay. You penetrated the dentin with your drill and you didn't give him local anesthetic; is that true?

A. No, I don't drill into the dentin. We use a spoon excavator when we reach the dentin.

Q. Okay. Let's look over here at T. You see T? You know Dr. Aman drilled and filled two teeth --

THE COURT: We're going to take our afternoon --

Mr. LEYENDECKER: I'm two minutes, Judge, literally two minutes. I promise.

THE COURT: Okay.

Q. Tooth T, you know that Dr. Aman, before Jeremy came back now for what would be the fourth time to be drilled on without local, he filled tooth T without a local, right? You know that?

A. I have to look at the record.

Q. Look it up. I'll tell you, that's March 27th, 2007 op report.

A. Can I have the --

Q. Well, you've got -- I tell you what, I want you to

accept my word that Dr. Aman did tooth T without a local, and if I'm wrong, we'll --

A. It's very hard for me to actually -- I'm sorry.

Q. Okay, you insist. We'll find it and make sure we've got it right.

THE COURT: 199 is over there.

Q. Let me ask you this: I'm going to cut to the chase. Does this filling on tooth T penetrate the dentin? Yes or no?

A. It's hard to say on that X-ray.

Mr. LEYENDECKER: I will pass the witness.

THE COURT: We'll take our afternoon recess. 15 minutes.

(Recess taken)

THE COURT: Will counsels approach, please?

Mr. LEYENDECKER: Your Honor, I told the defendants that since I got the -- found the originals, I would like two minutes just to finish with the witness with these.

THE COURT: Okay.

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

THE COURT: Mr. Leyendecker is going to question -- he found the original X-rays, so he's just

going to ask a couple of questions before he passes the witness on.

Mr. LEYENDECKER: Thank you, your Honor.

CONTINUED DIRECT EXAMINATION BY Mr. LEYENDECKER:

Q. Dr. Khan, do you recognize these as the original X-rays from the Small Smiles chart?

A. Yes, I do, yes.

Q. And I have -- these are those November 12th, 2011 X-rays we were looking at?

A. It doesn't say the date, but yes, I'm sure it is.

Q. Did anything about these originals change your view about whether the dentin was penetrated on tooth J with this filling?

A. J, it's hard, could be. I need to know the surface of the tooth actually, whether it's only occlusal or O.L.

Q. How about looking at the X-ray -- the original X-ray on tooth K? Do you believe that penetrated the dentin?

A. It looks like, yes.

Q. How about L, the one you worked on later? Did that penetrate the dentin of that filling?

A. The grey area, it's two-dimensional, so it's hard to tell on the X-rays.

Q. Let me just look over here. This tooth in the upper left-hand corner is tooth A, right, sir?

A. Yes, uh-huh.
Q. And this is tooth S and that's tooth T, right, sir?
A. That's right, sir.
Q. Did the filling on tooth T penetrate the dentin?
A. If it's the occlusal surface, yes, but the other surface, probably not. It's two-dimensional.
Q. How about the filling on tooth S? Did those fillings penetrate the dentin?
A. If it's only occlusal, then probably yes; other surface, probably no.
Q. Same thing with tooth S. That looks like it's less than 1 millimeter or so?
A. It's hard to tell.
Q. Dr. Khan, you do realize, having reviewed the record, that there were several visits in which these fillings were done without the use of any local anesthesia? You're aware of that, right, sir?
A. That's right.
Q. And is it fair to say that the reason that happened, because just like Dr. Knotts said, you all wanted to get him in and out with speed? Isn't that why no local was used, because if local had been used it would have taken longer and you couldn't get him in and out with speed the way Dr. Knott described?
A. That's not true.

Mr. LEYENDECKER: I pass the witness, your Honor.

CROSS-EXAMINATION BY Mr. FIRST:

Q. Good afternoon, Dr. Khan.

A. Good afternoon.

Q. I just have a few questions for you. I want to ask you about some of the things that Mr. Leyendecker didn't seem too interested in on a few of these exhibits. Could you turn to Exhibit 714, which should be right next to you? I'll help you, if you need help.

A. I've got it.

Q. Okay. I don't think you were asked about this: You say to Mike Roumph back on August 2nd, 2006, "I have always truly considered Small Smiles as my own personal office, and I will be there to work in any capacity to make it a better place." Did you say that?

A. Of course I did.

Q. Can you explain to the jury what you meant by that?

A. Well, Small Smiles was my -- it was like my private practice. I was able to make independent decisions, depending on the needs of the children, whether I would order a request for the equipment, the material that would be provided, so I was helping these children just like any other private practice. I had a passion and compassion for those

patients that I was working on and it truly felt like it was my private office, and I'm very, very proud that I worked there for six years. I wish I could have worked a little longer, but I think that I helped a lot of children all those years.

Q. And I may be asking you the same question. You said on April -- excuse me, it's Exhibit 716. You said on April 21st, 2006, "I will not leave any stone unturned until the Syracuse office becomes one of the best in the entire corporation." Do you see that?

A. Yes, I do.

Q. What did you mean by that?

A. That we will make every effort -- we will make a great team. I was very motivated, and throughout those six years I wanted to make sure we make a very good team, worked as a unit, front desk reception area, where you report to receptionist, six hygienists, twelve dental assistants, four dentists, so we were making a great team, so we were motivated and I was sure and it was my belief and it turned out to be one of the best in the corporation, that we helped thousands and thousands of those children for all those six years.

So when I sent this e-mail, I don't know, it was maybe 2006, and I had anticipated at that time and it turned out to be that I was right. It was a great office and we made a

difference in the life of a lot of children, countless children.

Q. And referring to Exhibit 101, I believe that's the marking where you wrote Michael Roumph and Dan DeRose -- yes, Mike Roumph and Dan DeRose -- an e-mail, dated May 31, 2006. Do you recall that e-mail?

A. Yes, sir, I do.

Q. That was really -- the primary subject was the problems with your broken appointment rates; is that correct?

A. This is the very first sentence, yes.

Q. And what was that about? You described it as a very stressful situation.

A. I had written, "I need your help and guidance about the problem about our broken appointments. It is a very stressful situation for me. I want to add at least one more column to our hygiene schedule." There had been times -- again, we were four dentists and six hygienists, a total of ten employees, so each patient slot was one hour. So if there are ten providers and each one sees eight patients a day, it turns out to be more or less like 80 patients. There were days where we were seeing a little bit more patients and there were days we were seeing a little bit less patients, and so give or take 80 patients. So... but there were about a few months that I remember that our broken appointments was 54 percent. I exactly remember the 54. They say it was 40

percent companywide, but I believe at our office it was everything at 50 percent. I do not know if our receptionist, our front desk was not making enough calls, but our broken appointment was 50 percent. So as a lead dentist, it was my responsibility to make sure that every dentist, every provider, every hygienist was busy.

So I asked them, okay, how to tackle this broken appointment, because I talked to the office manager and she tells me they're calling the patients but the patient has no transportation; the mother cannot take the day off from work; they cannot make it to their appointment. So I said: "You know what? Can we add another column of patients, like to make sure we have enough patients, like if you bring in eight or ten new patients and to just offset the broken appointments so the dentists and hygienists were not sitting around?" So we could have another column.

Q. So it was in that context you wrote that e-mail is that correct?

A. Precisely the first paragraph, yes.

Q. And this is what Mr. Leyendecker did ask you about, Dr. Dmitri. You've describe him as consistently underperforming. Those are your words, right?

A. That's right.

Q. Is that referring to what you be described earlier -- well, go ahead. You tell us what that means.

A. Well, I'll tell you one thing: I have been in this office -- the very next week when it opened, like I joined five days later because I had things to do in Boston, so I joined five days later. In all those six years that I was there, I have seen approximately fourteen dentists coming and going because they did not want to put up with the uncooperative children. A few stayed for a few months, a few stayed for maybe a year, close to a year, but a lot left before a year because they could not handle it.

So Dr. Dmitri was not an exception. He was a retired pediatric dentist, and he had retired ten years ago from practice, active practice. He was from Florida. His house was hit by tornado. FORBA offered him the job in the Syracuse office because -- to my recollection, when I used to talk to FORBA people, if you have any pediatric dentists in your area, bring them on board. And in our telephone calls they were encouraging us if there were pediatric dentists to hire them. So it's my understanding they give the job to Dr. Dmitri and he was late 60's -- 68, if I recall his age correctly. He was very elderly and he was not pulling his weight because of his age, and because he had practiced so many years he probably felt he did not need to. He was only there because his house was being rebuilt in Florida.

So after eight or nine months when the house would be finished, he would go back, so he thought he was there only

to relax for those seven or eight months and he did not need to work and that he can get away with it. Just because of his seniority he would not work. So yes, I -- it was demoralizing the whole team. It was -- other dentists were approaching me, "Why is he not working? Why I have to work? If he's not seeing uncooperative child -- who wants to deal with uncooperative children day in and day out?"

We were seeing all those children, we were getting all the referrals from other dentists from Massena to Watertown to Cortland to Utica, to you name it, from far-flung areas. So they were coming out, those uncooperative patients were coming and those little children, they needed help because those dentists passed them to someone else, passed them to Small Smiles. "Go to Small Smiles; they always take care of you." So it was not easy for any one of us working here, but it was particularly hard if one dentist would say, "I'm not going to put up with little uncooperative children." So I said, "No, you have to. Otherwise you are not working here because you're spoiling our whole team. The other dentists may say the same thing. The other dentists -- how am I going to be fair to someone else?" In that context, I remember it. As I said, many dentists in those six years, about fourteen of them, they left, but Dr. Dmitri was exceptionally slow. Because of his age and seniority, he did not want to do anything.

Q. Okay. I'm going to switch gears on you. During the time when you were working at the Syracuse clinic when Old FORBA was around, Dan DeRose and Mike Roumph, did anyone from Old FORBA ever pressure you on dental decisions?

A. No.

Q. Did anyone ever interfere with your professional judgment with respect to any patient?

A. No.

Q. And once you became a lead dentist, did you ever pressure dentists with respect to their individual dental decisions?

A. I would never interfere with the individual decisions of the dentist. I would make sure that they'd be busy, that they would not just numb the patient, give a lidocaine injection and then go to their office and retire and be on the phone doing their own personal business thing. So yes, I was telling them "when you're here you have to work." But when it comes to treating the patients, it is completely -- because they are licensed by the State of New York. They are very capable people that I was working with. So no, I did not have to -- I did not need to tell them what to do and not to do. It was their independent decision. Never pressured anybody.

Q. So did you ever interfere or pressure any dentist with respect to their professional judgment?

A. No.

Q. Did you ever pressure any dentists to commit dental malpractice?

A. No.

CROSS-EXAMINATION BY Mr. McPHILLIAMY:

Q. Good afternoon, Dr. Khan.

A. Good afternoon.

Q. When you were at the Syracuse clinic, did New FORBA ever pressure you with regard to your care and treatment or your care and treatment decisions as to when you treated patients?

A. No.

Q. Did they ever put any pressure on you with regard to your professional judgment when you were caring for and treating the patients at the Syracuse clinic?

A. No.

Q. Did they ever ask you to commit malpractice?

A. No.

Q. Now, when you became a lead dentist, did you ever pressure your associate dentists into -- or attempt to influence their professional judgment when they were treating patients?

A. No.

Q. Did you ever as a lead dentist attempt to or did you

ever attempt to influence your associate dentists with regard to their use of their own professional judgment?

A. No.

Q. Did you ever try and put any type of pressure on them to commit malpractice?

A. No.

Q. Now, Dr. Khan, when is the first time you saw Jeremy Bohn? You have the chart right there.

A. That I saw personally?

Q. Yes.

A. It looks like November 12th, 2007.

Q. Okay. And when you saw him on November 12th, 2007, did you examine Jeremy's mouth?

A. Yes, I did.

Q. Okay. And after you examined his mouth, did you develop a treatment plan for him?

A. Yes, I did.

Q. And did you place the contents of your treatment plan onto one of those treatment plan authorization forms?

A. Say it again.

Q. The results of your treatment plan, did you write those onto a treatment plan authorization form?

A. Yes, I did.

Mr. McPHILLIAMY: Can I have number 50?

Q. What we have on the screen here is the treatment plan

authorization form from November 12th, 2007?

A. That's right.

Q. Now, let's go to your treatment. You recommended a two-surface filling or a pulpotomy stainless steel crown for tooth letter S; is that right?

A. That's right.

Q. And you also made a treatment plan for a Nance appliance. Is a Nance appliance one of those appliances which is placed in the mouth to replace missing teeth?

A. Nance appliance actually maintains the space for the permanent teeth. Like if the baby teeth are prematurely extracted or lost, we want to put a little appliance, a little wire, a bristle type of simple wire to maintain the space for the permanent teeth, so when they were growing in they would not be crooked.

Q. And did you also treatment-plan him for a two-surface filling on tooth letter L?

A. Yes, I did.

Q. Now, on this date, November 12th, if you would have done or performed the two-surface filling or the pulpotomy stainless steel crown on tooth S, what would that have done for your P.P.P. for Jeremy that day?

A. It would have increased.

Q. If you had also done the Nance appliance on that day, what would it have done for you P.P.P.?

A. Same thing, increased.

Q. Same question for the two-surface filling on tooth S?

A. It would have increased.

Q. You're familiar with the term "conversion"?

A. I am.

Q. And what's -- in the Small Smiles clinic, what does conversion mean to you?

A. Conversion is when a patient presents for a hygiene cleaning appointment and they need filling, if they have cavities, they have abscessed teeth or any situation that needs dentist treatment, then we talk to the parent that if they have time and they agree to get at least some of the treatment done that day, then one of the dentists can see the child. And if the parents agree, then we bring that patient to the operative side so one of the dentists can help the child with fixing -- you know, extraction of the tooth. So this is called conversion from the hygiene bay, where the cleaning work is done, to the operative bay where the restorative work is done.

Q. So you actually are moving the patient from the hygiene room to a different room where the operative procedures are being performed; is that correct?

A. Yes.

Q. Now, did you -- were Jeremy's teeth cleaned on this day?

A. Yes.
Q. Now, on November 12th, 2007, did you perform all three of these procedures in your treatment plan?
A. We did the cleaning but we did not do any of the procedures.
Q. You didn't even convert him over from the hygiene to operative on that day, is that correct?
A. That's correct.
Q. You did see him again after that, didn't you?
A. Yes, I did.
Q. The next time you saw him was when?
A. I believe it was November 27th.
Q. November 27th, 2007?
A. Yes.
Q. Well, on that date, did you do all three of these procedures that you treatment-planned him for?
A. No, I did not.
Q. Did you do two of the procedures on him on that day?
A. No, I did not.
Q. How many did you do?
A. I did one procedure.
Q. Okay. And which one was that?
A. Tooth number S, I did a crown on that tooth.
Q. Did you see him again after that?
A. Say it again.

Q. Did you see Jeremy again after November 27th, 2007?
A. Yes, I did.
Q. When is the next time that you saw him?
A. January 21, 2008.
Q. And did you treat him on that date?
A. I did.
Q. Well, on that date did you do the two remaining procedures that you had previously treatment-planned him for?
A. No, I -- we took impression, yes. We did the filling and we took impression because we had to send it to the lab, to take impression for the appliance. Like we had to take measurements for that appliance and we had to send it to the lab in Rochester, so they could make it. And once it comes back from the lab, then we would call Jeremy or Jeremy's mother or parent, "The appliance is back from the lab" and he can come so we can place the appliance.
Q. So you completed one of those two treatments on that date; is that correct?
A. Yes, that's right.
Q. Okay. And was Jeremy seen at the office again after that?
A. Yes, he was.
Q. Did you see him on that -- when was that date?
A. It was March 7, 2008.
Q. Did you see him on that date?

A. He was seen by Dr. Aman.

Q. And what did Dr. Aman do on that date?

A. Dr. Aman just put the appliance because it was ready.

Mr. McPHILLIAMY: I have nothing further, your Honor.

THE COURT: Mr. Stevens?

CROSS-EXAMINATION BY MR. STEVENS:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. How are you?

A. Very good, thank you.

Q. You have some transcripts next to you?

A. Yes, I do.

Q. May I see that second transcript -- I'm sorry, the transcript of your deposition? And does this reflect 750 pages of testimony that was done over a period of two days?

A. Yes, it is.

Mr. LEYENDECKER: Your Honor, may we approach on that real quick?

THE COURT: Yes.

(Discussion off the record at the bench)

Q. Dr. Khan, would you tell the jury where you were born?

A. I was born in Pakistan.

Q. And were you born in a big city or some other kind of

place?

A. It was a small, remote village, in the northwestern tier province of Pakistan, on the border closer to Afghanistan. I'm sure a lot of people have heard about Afghanistan these days.

Q. Did you have a -- tell the jury just something very briefly about your family.

A. Well, my father was a primary school teacher. We were eight kids, all brothers. We had no sisters, and I was the youngest of all, and so... that's all I can tell you, but --

Q. Okay. I don't want you to go on. Was there a dentist in your village?

A. There was no dentist. It was very, very, very remote village. This is something that most Americans probably would not understand because I think Americans take it for granted a lot of things, but it was a very remote area and no access to medical or dental care.

Q. Thank you, Doctor. Did there come a time in your life when you decided you wanted to go into the field of dentistry, and briefly would you tell the jury how that came about?

A. I was about six or seven years old when my mother had a toothache and my father had brought a carpenter --

Q. A carpenter?

A. Yeah.

Q. Doctor, let me go on to another question. When you came to -- I know you get emotional but you advised me about the situation that occurred when your mother and the carpenter -- when you were age six?

A. Yes.

Q. And did it involve a pair of pliers and an inspection of the tooth?

Mr. LEYENDECKER: This is beyond the scope and I'm not sure where he's going here.

Mr. STEVENS: I'll try to get by this quickly.

A. Okay, I --

Q. No, no. After that event, what did you make as your goal in life?

A. I wanted to become a dentist then.

Q. And how did you become a dentist in your country?

A. Well, we had, you know, dental school in the province and I had good grades; I was working hard. My father was a primary school teacher, so a lot of emphasis on education. So we were coming from a very remote area. I'm one of the underserved because I know what it means, so...

Q. Doctor, how many years was dental school and where was it?

A. Four years in Pakistan, Peshawar.

Q. And did you have a residency after that?

A. Yes, we had a residency, yes, one-year residency.

Q. Just briefly, would you tell the jury something about the residency?

A. Yes, we had four years of dental education like in the United States and after that we had a one-year residency, mandatory, to get license. And afterwards, I went for two years more residency. It was a residency on periodontology. It was a Master program.

Q. Let me interrupt you for a second. Were you one of three people in the entire country to be accepted to the periodontology university?

A. That's right, I was accepted. Once I started one residency, I started the other, so I was fortunate to get accepted in that program, yes.

Q. When you came to the United States and you told the jury you were employed for awhile, went back to Pakistan, worked in a governmental clinic in the daytime and practiced in the evening. Am I summarizing this correctly?

A. Yes, sir.

Q. And when you came back to the United States to further your education here, you applied to the New York University School of Dentistry?

A. Yes, I got admission into New York University, and while I was doing orientation, I got an acceptance letter from Boston University, and it's one of the best private dental schools in the country, so I was very fortunate that I

got admission in two dental schools, but I opted for the Boston University, so I went there.

Q. Was it after completing your studies at Boston University that you interviewed and took a job at Small Smiles?

A. Yes, I did.

Q. Would you just describe the facility to the jury, please?

A. Well, the Small Smiles, when I was offered -- actually, when I got out of -- I graduated from Boston University, I had a job offer in Watertown --

Q. I'm sorry. Would you describe the facility? In other words, the office?

A. Oh, the office was great. It was 8,000 square feet covered area, beautiful, you know, cartoon characters. We had, you know, little toys for children and stickers and, you know, kids-friendly. We had reception who particularly their personality was that they would welcome the patients, welcome the little children, and some of them would be anxious. They would just bring them in the back to the toyboxes to make sure they get a sticker or two or toy or two and tell them: "Okay, if you stay good during the treatment, you'll get more. You will probably get two stickers," and those kinds of things, so it was really children friendly. And when I was seeing all those children, obviously -- it's beyond

description when you see those kids. It was not their fault that they were coming from poor families, but some of the children's teeth were bombed out. I think when I look back -- all this --

Q. Dr. Khan, I'm sorry. I didn't ask you about the children. Try to keep a focus. You were six years at the Syracuse clinic, correct?

A. I was.

Q. Approximately how many children would you see on an annual basis, you personally?

A. Thousands and thousands. I mean, I've seen thousands of children, countless. Those six years was such a busy practice that I have seen thousands, thousands.

THE COURT: Can I just see counsel, please?

(Discussion off the record at the bench)

BY MR. STEVENS:

Q. Doctor, you saw Jeremy Bohn as one of your patients, correct?

A. He was one of the many patients that we have had, yes.

Q. And Jeremy Bohn, was he on occasion at Small Smiles and you saw him on visits seven, eight and nine; am I saying that correctly?

A. I think so, yes.

Q. And the first visit with Jeremy with you was November 27, 2007; is that correct?

A. Yes, but November 12th, I believe.

Q. Could I have page 48?

Mr. LEYENDECKER: I think --

Q. Doctor, when the parents come in for a visit, November 12th, 2007, was he brought on this occasion by his father, Chuck Bohn?

A. That's right.

Q. And without being a handwriting expert, you can see this is filled out and it's in the father's hand, not the neat handwriting you saw signed by Kelly Varano?

A. That's right.

Q. And is this something you review before you treat?

A. Of course we discuss this with the parent, yes.

Q. And we learn from this form that Jeremy is now in grade K for kindergarten?

A. Yes, sir.

Q. And we learn from this form that his health is good; fair statement?

A. Yes, sir.

Q. Page 49, please. Is this a hygiene visit?

A. It's a hygiene visit, yes.

Q. Tell the jury about the hygiene room.

A. Yeah, we have hygiene area. When the patient comes back for a recall visit, they come the first time, so they typically are seen by the hygienist who clean the teeth, pick

out one of the dentists, whoever is free, to check the teeth and do the exam.

Q. And, Dr. Khan, on this date did you perform something called an oral examination?

A. Yes, I did periodic oral examination, yes.

Q. Tell the jury how you perform a periodic oral examination on a kindergarten-aged child like Jeremy?

A. It's really difficult, as I said in my testimony. Some of these little children are really anxious, nervous, uncooperative. But we do the best we could, use tool, mirrors and try to take X-rays. In this case, we couldn't take one, a good diagnostic X-ray, so I have written there to repeat the left bite, which means the left X-ray is not good-looking, because the children cannot cooperate because of their age, so...

Q. And, Dr. Khan, on this case you did take a repeat, correct?

A. We did.

Q. And the repeat in this case was better, true?

A. Yes, the second time we got a good X-ray.

Q. You used your judgment that it would be worthwhile to expose the child to radiation and you successfully got a better X-ray?

A. That's right.

Q. Did Jeremy have his teeth cleaned on this date?

A. Yes.
Q. And did he have a fluoride treatment?
A. Yes.
Q. And on this date was there something called oral hygiene instruction?
A. Yes, oral hygiene instructions were given.
Q. And, Doctor, what did you note in terms of how the patient was acting that day?
A. We have documented --
Q. Just read the first two words in your notes. Does it say: "Patient busy"?
A. The patient was busy, yes.
Q. What exactly does that mean?
A. The patient is not able to focus, not able to follow the directions, like, you know, squirming in the chair, to that nature.
Q. Page 50, please. Continuing on this same date, did you make a treatment plan, on November 12th, 2007?
A. Yes, sir.
Q. And on this treatment plan, you made a plan for tooth S?
A. That's right.
Q. How many surfaces were involved on tooth S?
A. Two surfaces.
Q. What are those two surfaces?

A. D.O.

Q. And D.O. means occlusal, biting surface?

A. Yes, in between the teeth, when there's a new cavity in between the teeth.

Q. And your plan was either to put in a filling or something else, "P.S.S.C." question mark?

A. That's right.

Q. What does that mean?

A. Means there was a possibility knowing that Jeremy, he had so many cavities, he had a lot of -- you know, before, he had abscesses; he had bad oral hygiene, that he might need crown and pulpotomy.

Q. And looking at the -- could I have the whole page back, please? Is this something you discuss with the parent after the treatment plan?

A. Yes, we do, all the time.

Q. And does the parent sign at the bottom of the treatment plan to indicate approval for your suggestions?

A. Not only at the bottom but at the top as well. I make them sign on the line to make sure he understands it.

Q. So you now have approval from the parent to do this work, to do any of the things in the treatment plan should you feel them appropriate?

A. Yes.

Q. You didn't perform all these items, did you?

A. I did not.

Q. Although you worried that a pulpotomy might be necessary, when it came to the final examination, you realized you didn't have to do it and you didn't?

A. I did not do it, yes.

Q. May I have Page 51, please? The X-rays that you took on that day, the one that hasn't been discussed with you yet, the one on the left-hand side, does that include the picture of the front upper four?

A. Yes, it is.

Q. Are those the stainless steel NuSmile crowns?

A. That's right.

Q. Are they in place?

A. They are in place.

Q. What's your opinion of the durability of that?

A. These NuSmile, especially the front teeth with children who have high risk for caries, which means potentially they can get new cavities over a period of time, they cover all the surfaces. It covers just like a crown but it's really fairly easy to do it on children because they are preformed already so you just snap it there once you prepare the tooth. It works fine because there's no chance for future decay because it covers all the surfaces. It was great.

Q. Doctor, on that same day, November 12th, did Jeremy's

father, Chuck Bohn, sign a consent that when this work is done, the work that you treatment-planned for, if local anesthesia is going to be used it's allowed to be used and if nitrous is going to be used, that's okay?

A. Yes.

Q. And are there some risks up there under local anesthesia on Number 3 that say there can be prolonged numbness which could lead to chewing of the lip or tongue?

A. It's really hard for children once we numb them to feel their lip because they keep biting like this because they want to feel where their tongue went, where their lip went. So a lot of times we explain to the parent, to make sure you watch it, just sit in front of the child for two hours or three hours until the anesthesia effect wears off. But still some patients would come back because they were still biting. It's a real danger and sometimes it can be really bad because even if you are distracted for a few minutes, it can happen.

Q. Thank you, Doctor. And did you have a visual aid for parents just to help warn about that problem?

A. We have some pictures of children that had come back with lip-biting. We call it lip-biting. It would really look bad, and we would just show it to the parent because sometimes they would not know what we meant until we show them the pictures. "Oh, this can happen?" "Yes, watch,

because this can happen to your child."

Q. Dr. Khan, is that something that can happen especially when numbing the lower jaw?

A. Right, it just --

Q. Just lower jaw, correct?

A. It can happen top and lower, but particularly lower jaw.

Q. And one of the other warnings is injury to nerve on the lower jaw injection?

A. That's right. When you are giving injection because it's a blind technique. You go so far deep in the lower area, that if you hit the nerve it can lead to paresthesia -- it means tingling of the lips -- which can be permanent or temporary. Sometimes it can last for a few months; sometimes it can last longer. Sometimes it can be permanent. It potentially can happen and it's real.

Q. Dr. Khan, does it make a difference if you're working with a cooperative patient or a patient that's out of control and moving, in terms of these risks, the risks of causing injury with injection?

A. It is very important; if the child is cooperative you can give injection relatively safely. Worse is if you give injection and the child moves, the injection can actually, the needle can actually be where I hit the nerve or damage the nerve, so it can happen.

Q. And did you see Jeremy on November 27th --

A. Yes, I did.

Q. -- on his eighth visit? And on November 27th, is this the time when you're starting to complete the treatment plan and you worked on tooth S?

A. Yes, I did.

Q. Can you tell the jury what you did to work on tooth S?

A. This tooth was tooth S, planned for a filling or crown or possible pulpotomy. It means it's really difficult with the examination, until you go there and clean the tooth. Then we can find what is needed. So when I cleaned the tooth for the crown, though I had treatment-planned it for a pulpotomy, that he will need pulpotomy, I did not do a pulpotomy on Jeremy because I didn't think he really needed it. This is what really bothers me, because if I had done pulpotomy, it would have increased the per dentist production, but I changed my mind because I thought it was best for the child. So I changed my own treatment plan. I could have done it in five minutes, the pulpotomy, and I did not do it.

Q. This is a multi-surface decay?

A. Yes, is.

Q. And did you write a note saying that the impression for the Nance could not be taken and the father should reschedule, and you said: "Dad returned to wait outside."

Is that in your notes?

A. Yes.

Q. Why did you want Jeremy to come back again?

A. Because he had, I believe, one more filling left, if I recall correctly, or --

Q. And did you see Jeremy on January 21st, 2008 for his ninth visit and his last visit with you?

A. Yes, I did.

Q. On this visit, did you treat tooth L?

A. Yes, I did one filling on that surface.

Q. Was it a single or multi-surface restoration?

A. Two-surface filling.

Q. Did you write under the notes "R.I.C.G."?

A. Yes.

Q. What does that mean?

A. This is our common practice and standard that we would write, if you would talk to the parents, which we were, then you would write R.I.C.G., received informed consent from guardian, R.I.C.G. So it was just like a term because occasionally the parents would not be there so we would call them over the telephone, so then you would write something different than R.I.C.G. but when they would be there --

Q. I sorry, I wasn't asking about something different; I was just asking you about R.I.C.G. It means that you spoke to the parents about -- on this date -- about this treatment

before you did the treatment, correct?

A. That's right.

Q. And received informed consent means they agreed, true?

A. Yes.

Q. This was a two-surface restoration on tooth L?

A. Yes.

Q. You performed that?

A. Yes.

Q. And that was your last contact with Jeremy, true?

A. That's right.

Q. You told the jury about the fact that some decay is in the enamel and some of the decay goes below the enamel?

A. Yes.

Q. Are you and the dentists that you work with -- I'll ask a different question.

What do you do when a -- when a carie appears superficial, but upon entering the enamel you find that it goes deeper into the dentin?

A. Again, this is a very clinical situation. It's very hard to explain in two minutes, but if we see on the X-rays, you look at the X-rays clinically and you do the assessment that the decay is reasonably superficial and the patient does not need because we feel there's a risk of injection --

THE COURT: Slow down.

A. Sorry. All right. Because you think the injection is

not needed because the risks and complications are so great that you can get away with one second filling; it would be in best interests of the patient. So -- but when it turns out to be actually that when we are working on the tooth and we see that actually it is deeper than we thought, so we pause, we stop, we assess the situation.

Q. How do you do that?

A. We stop. We look at the X-rays; we clean -- we look at the tooth, we clean it, and then if we think it is deeper, we decide is it deep, that we should give injection, or we can use the spoon excavator to just scoop it out, the decay. And a lot of times we are very successful. It's a common practice in pediatric patients. It's what we used to do. It was my common practice. We would scoop it out and put the filling. There were times that they actually needed lidocaine during the procedure. So at one point I thought it was not needed, but now it is needed so that I would give it to them. So it depends on the situation, whether it is needed or not needed.

Q. And why is it that this -- what is being called the spoon excavator, is able to remove material from the tooth? Is it soft or hard material that you're removing?

A. Oh, it is very soft, especially if the decay is approaching to the -- because the issue is -- has reached the dentin, it's very, very soft. The spoon excavator is

designed by the manufacturer in such a way that you can just put it there and scoop it out.

Q. Thank you. We'll see a picture of a spoon excavator later in the trial when a different witness is on the stand.

A. Okay.

Q. Doctor, you were asked by my colleague, Mr. Leyendecker, whether it was your habit to review the chart when you treat the child?

A. It was a -- it was our custom and practice. We would always do that. It was a built-in second opinion that like someone else would do the treatment plan; someone else would treat the child, so it was great for the children because it's a built-in -- like normally people -- another dentist would send a patient to another office to get a second opinion. And in our office the beauty was that I treat this child today; next time someone else sees and they would review the treatment plan, and if they agree, they would proceed. If they don't agree with it, they would go and talk to the parent, that this is why I think that this is best, and they would proceed. So we always reviewed the child.

Q. And, Doctor, you would review the prior treatment for the purpose of treating Jeremy and you also evaluate the dentists as the lead dentist, true?

A. Yes, this was part of my job to evaluate the work of the other dentists, yes.

Q. Doctor, were you satisfied with the treatment of Jeremy Bohn that you found in his chart?

A. Yes, I was very comfortable. Given that I know the dentists that were working with me for five years, I was really comfortable with their ability to treat children and provide care to these little children who they needed help.

Q. And last question: Did you ever pressure or influence Dr. Naveed Aman or Dr. Koury Bonds to change their clinical judgment with respect to treatment of children?

A. Never.

Mr. STEVENS: Thank you, Doctor.

Mr. LEYENDECKER: Very brief. I'll be one minute, your Honor. May I?

REDIRECT EXAMINATION BY MR. LEYENDECKER:

Q. Dr. Khan, are you saying you didn't give Jeremy local because it was too risky? Is that what you're telling this jury?

A. Yes. Depends on the given situation. You have to assess the situation. There are definitely risks associated with the lidocaine, right.

Q. Too risky for you, right?

A. Okay. Let me --

Q. The question was --

Mr. STEVENS: May he finish?

THE COURT: He is going to rephrase the question. He hasn't answered it.

Mr. STEVENS: He started his answer --

Q. Am I right that the reason you didn't give a local is because you thought it was too risky? That's yes or no?

A. I had seen Jeremy on two occasions. On one occasion I gave lidocaine because I thought he needs it, but the other occasion I didn't think he needs because I assess the risks, advantages and disadvantages. So for a superficial filling, yes, I believe it would be too risky, that when he bite the cheek, the nerve can be damaged, other complications can happen, like the child cannot open his mouth from the soreness of the injection site. So we assess all those things and then we think that should we give injection, or we -- we can just do the filling without where it is reasonably superficial.

Q. Are there any notes you have written here that reflect you told Jeremy's mother and father you were going to drill on his teeth without any local?

A. We can --

Q. That's a yes or no. You told us a good doctor, a prudent doctor tells a parent when you're going to drill on him without local. Are there any notes that say you told the parents that; yes or no?

A. We do not write whether the patient is told on that

date. As a custom and habit, we discuss all the things with the parents before we do anything.

Q. If you treat a child in a way to get them in and out with speed, as Dr. Knott said he was training you all to do, doesn't that mean you can see more parents and generate more revenue and that increases production, right?

A. Absolutely not. When the child is on the little stabilization board, on the stabilization board, we want to work fast so it takes shorter periods for little Jeremy so he's not sitting in the stabilization for long period of time. It's nothing to do whether if we want to work faster or not. It was in the best interests of the patient because we did not want a little three-year-old -- because he can not tolerate a procedure for too long.

Q. You said something that really struck me --

Mr. STEVENS: Objection, your Honor.

Q. You said during your examination that Dr. Dmitri did not want to put up with the uncooperative children, and so here's my question: Isn't it true that the better course would be to try and calm a child down, to soothe him, perhaps let his mother come back and calm him down, but the reality is in an environment where you've got to get them in and out with speed, you don't have that opportunity, do you, sir?

A. It always comes down to the patients. He was not seeing any patients. English is not my language. If you are

picking on a particular word, I do not know the meaning, but it has nothing to do with -- he was not seeing any patients. It has having nothing to do with the patient. He was not seeing any children, let alone any patients.

Q. That's why you saw these kids, you had to quote, unquote, put up with them, right?

A. That's why I said English is not my language. If you're picking on from the legal point of view, I really don't know. But I was very proud. I wish I had helped more children. I helped thousands of them and I wish I had helped more of them because those children needed help.

Q. I'm not picking on you for language. I'm picking on you for your attitude, sir.

Mr. LEYENDECKER: Those are all the questions I have.

THE COURT: Okay.

RECROSS-EXAMINATION BY Mr. STEVENS:

Q. Doctor, you were just asked whether you had a conversation about consent of the parents on this visit, and can you just tell me what these say, if I am reading it correctly, R.I.C.G., received informed consent guardian?

A. Received informed consent from guardian.

Q. And in that document, you had a discussion about what you intended to do when you treated --

A. It describes -- precisely means we discussed how are we going to give this filling, whether we are going to give lidocaine or not, so all this discussion, these are customary habits, but we cannot write everything, single thing. These are customary habits that we do every day, day in and day out. This covers everything, that all this discussion happened and we actually discussed with the parent. We don't think we need to give lidocaine in this case because it would be best for the child. And the other occasion, the same child came, I give lidocaine because at that time I thought it was needed. So I will give -- I will use my judgment on any given day and situation whether it is best for the patient or not.

Q. And no one tells you how to use your judgment, true?

A. No one tells me but my conscience and myself and my professional obligation, yes.

Mr. STEVENS: Thank you, Doctor.

THE COURT: Anybody else?

Mr. LEYENDECKER: No, your Honor.

THE COURT: Okay. All right. You may step down. Thank you.

THE WITNESS: Thank you.

(Whereupon, the witness was excused)

THE COURT: Our week is done. We're going to resume Monday morning at 9 o'clock. Have a great weekend.

Don't talk about the case; don't do any independent research, and I'll see you Monday.

(Whereupon, the jury was excused)

(Whereupon, the proceedings were adjourned at 4:12 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 28, 2013

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