

1 STATE OF NEW YORK : FIFTH JUDICIAL DISTRICT

2 SUPREME COURT : COUNTY OF ONONDAGA

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4 KELLY VARANO, As Parent and Natural Guardian
of Infant JEREMY BOHN; et al.,

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Plaintiffs,

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7 vs.

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

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10 FORBA HOLDINGS, LLC, FORBA, LLC n/k/a
LICSAC, LLC; DD MARKETING, INC.;
11 SMALL SMILES DENTISTRY, PLLC,
including: MAZIAR IZADI, DDS;
LAURA KRÖNER, DDS; LISSETTE BERNAL, DDS;
12 NAVEED AMAN, DDS; KOURY BONDS, DDS;
YAQOOB KHAN, DDS; JANINE RANDAZZO, DDS;
13 LOC VIN VUU, DDS, et al.,

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Defendants.

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JURY TRIAL

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October 2, 2013

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Onondaga County Courthouse
401 Montgomery Street
Syracuse, New York 13202

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1 B E F O R E:

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HONORABLE DEBORAH H. KARALUNAS,

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Justice of the Supreme Court and a Jury

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1 (Morning Session - October 2, 2013.)

2 THE COURT: Morning.

3 MR. HIGGINS: Morning, Judge.

4 THE COURT: We are waiting for one juror.
5 I decided to come out to see if there is anything
6 we needed to put on the record today before the
7 jury comes in.

8 MR. HIGGINS: Yes, sure. Please, if we
9 can, Judge, I'd just like to move in without
10 objection a newly marked Exhibit 1126-A, which is
11 a 5/17/06, two-page document from Dr. Taylor's
12 which was not part of the original exhibit. We
13 are moving this in. It is only related to the May
14 17th visit. It is two pages. I showed it to all
15 of counsel.

16 THE COURT: So why don't we do that -- I'd
17 like to have the exhibits received when the jury
18 is present.

19 MR. HIGGINS: That's fine, Judge.

20 THE COURT: Anything else?

21 MR. NOWATNY: Yes, Your Honor. Your
22 Honor, during the examination of Miss Varano I was
23 going to utilize a timeline. It's been marked as
24 1264. It's for demonstrative purposes.

25 I removed an offending comment about the

1 hospitalization in June to address the concerns
2 expressed by Mr. Higgins.

3 MR. HIGGINS: Sure. My only objection is
4 it doesn't have -- the time frames are not --
5 they're not sequential. The same thing with the
6 other exhibit. With the limiting instruction to
7 the jury, I wouldn't have any objection with that.

8 THE COURT: I'm not -- what -- I don't
9 understand what you mean, the time frames are not
10 sequential?

11 MR. HIGGINS: In other words, they are all
12 done equally and the time frames --

13 THE COURT: Okay.

14 MR. HIGGINS: Yes, that's my only
15 objection, Judge.

16 THE COURT: Okay. Just looks like a list
17 to me. I wasn't looking at the time frame.

18 MR. HIGGINS: That's fine. That's my only
19 objection.

20 MR. NOWATNY: Your Honor, we'd like to
21 place a stipulation on the record. While we were
22 in chambers yesterday, we had a discussion
23 regarding the potential claims for future pain and
24 suffering and other harms that have been part of
25 this case early on.

1 And during the conversation we had with
2 counsel, they have indicated they do not intend to
3 pursue that.

4 And what we would like to do is remove any
5 ambiguity and put on the record a stipulation that
6 there will be no harm or damages for emotional
7 distress requested by plaintiff's counsel from
8 June 6, 2009 to the present, based on conversation
9 we had in chambers, and that we will be putting on
10 the jury verdict sheet out there capping past pain
11 and suffering damages up to that June 6, 2009
12 date, and there will be no request for future pain
13 and suffering or harm related damages.

14 MR. HIGGINS: Judge, I think, first of
15 all, we did have that conversation. We did
16 discuss that in chambers with all counsel and I'm
17 certainly not saying otherwise.

18 However, what we said was that we don't
19 anticipate that we are going to be presenting
20 proof through Miss Varano at the end of our case
21 -- end of Miss Varano's direct we will be moving
22 to exclude unrelated injuries based upon what we
23 anticipate the proof to show.

24 We did not say we would stipulate to
25 anything and, again, we're not, you know, we're

1 anticipating that's the way the proof will go in,
2 but our case is still open, so I guess what --

3 THE COURT: So you will defer until
4 after -- until you're ready to rest on that issue?

5 MR. HIGGINS: Yeah. I don't anticipate
6 there will be an issue. From my own standpoint
7 I'm a little -- stipulations are stipulations and,
8 you know, I think I was saying what I expect how
9 things -- I expect things to go, and I still
10 expect things to go that way. I'm not saying
11 anything differently today.

12 We're not prepared to stipulate at this time
13 since our case is open.

14 THE COURT: Okay.

15 MR. NOWATNY: I raised it at this point
16 because Miss Varano, I believe, is taking the
17 stand today and this is the time to get into that,
18 and if they don't want to stipulate to it, how can
19 I protect my client from having that raised on the
20 backside after the best witness to address those
21 issues is now off the stand.

22 THE COURT: How about this? Plaintiff
23 will rest, and if they're not willing to stipulate
24 to that at the end of their proof, you can put
25 Miss Varano back on the stand.

1 MR. NOWATNY: That will be fine. Thank
2 you.

3 THE COURT: Okay. Anything else?

4 MR. HIGGINS: No, Judge.

5 THE COURT: So we are going to start with
6 Miss Varano.

7 MR. HULSLANDER: Judge, sorry. I might as
8 well bring it up now. Uhm, they're going to or
9 show Adair, fifteen minutes of Adair at some point
10 today, if we get to it.

11 And everything they want from Adair has to
12 do with this TV show that occurred in 2007 and
13 you're well aware of it, we addressed it before.
14 We believe it is prejudicial. I'm going to object
15 to it. I don't think it has a thing to do with
16 what is going on in Syracuse.

17 And, in addition, it talks about papoose and
18 kids to get them in and out. Again, that's a
19 statement made after Jeremy was papoosed. It has
20 no relevance whatsoever to what is going on in
21 Syracuse in 2006.

22 All they have done is pare Adair down to the
23 television story. And that's purely objectionable
24 and prejudicial and irrelevant. It has nothing to
25 do with this case. And we ask that it be

1 precluded. I mean that's a TV show in Maryland,
2 that it's purely hearsay. They're talking about
3 having deposed Aldred Williams. They just want to
4 back door this in through Adair. And it's
5 completely wrong.

6 MR. LEYENDECKER: Two things, Your Honor.
7 Number one, you already ruled on the objections to
8 the various deposition designations, including
9 that testimony.

10 But, number two, and perhaps more
11 importantly, it is our desire to try and finish
12 today if we can. And I think that of the three
13 tapes, the one that we would cut out would be Dr.
14 Adair.

15 So I'm anticipating if there is time to play
16 Mr. Smith and Mr. Lindley, we would do so in an
17 effort to get done today. I'm anticipating Dr.
18 Adair would not be shown. I want it clear that
19 these objections have already been ruled on.

20 THE COURT: Thank you.

21 MR. HULSLANDER: They may have been ruled
22 on. You reserved on the motions in limine because
23 this was a topic of a motion in limine and, you
24 know, to the extent that we -- to the extent that
25 you're allowing this kind of testimony in without

1 a fraud cause of action under -- based solely on
2 the GBL claim, it's highly prejudicial,
3 irrelevant, not supported by the law and shouldn't
4 be allowed by this Court.

5 THE COURT: Mr. Hulslander, I don't want
6 to deal with something I don't have to. Let's
7 wait until --

8 MR. HULSLANDER: I wanted to raise it to
9 give you notice.

10 THE COURT: I appreciate that, but you
11 don't need to argue it.

12 MR. FIRST: Judge, I'm not going to argue.
13 I join in those concerns. I would just like to
14 point out for the Court that Mr. Smith, portion of
15 Mr. Smith's testimony also deals with the Channel
16 7 news story, and I can give you those sections.

17 THE COURT: I have all -- I don't have it
18 down here with me, because I wasn't thinking to do
19 that before morning break.

20 MR. STEVENS: I will say I join. Also
21 concerns me that in my closing the jury to go on
22 to YouTube to try to find that and they can easily
23 and very well do that.

24 THE COURT: I think we have a great jury
25 that's paid very good attention throughout this

1 trial, and I don't believe that the jurors are
2 violating my admonitions to them, repeated daily,
3 not to do any independent research. So I hear
4 you, but I don't agree with you.

5 MR. HULSLANDER: I just want to make --

6 THE COURT: Just a second. Are they all
7 here?

8 THE CLERK: No.

9 MR. HULSLANDER: Can I make one more
10 point?

11 THE COURT: Do you know who it is?

12 (A discussion off the record at the Bench,
13 court attendant present.)

14 THE COURT: You have all turned in your
15 jury questionnaires, right?

16 MR. LEYENDECKER: We did that during voir
17 dire, Your Honor.

18 THE COURT: I needed a copy. We are
19 missing one juror and I just wanted to find out.
20 It's the young person on the end, Rhinhardt.

21 MR. HULSLANDER: Can I make one more point
22 while we're waiting, Judge?

23 THE COURT: Of course.

24 MR. HULSLANDER: Thank you. You've ruled
25 during Knott's testimony that anything with

1 respect to the Advisory Board, changes in the
2 papoose policy, recommendations with respect to
3 the Advisory Board regarding the papoosing is not
4 to come in. And to the extent that they --

5 THE COURT: That was subsequent remedial
6 measures.

7 MR. HULSLANDER: Exactly.

8 THE COURT: Right?

9 MR. HULSLANDER: Exactly.

10 THE COURT: Yup.

11 MR. HULSLANDER: And to the extent that
12 they intend to show that through Lindley and
13 Smith, I think the same applies with respect to
14 Lindley and Smith.

15 The issue of papoosing and how it was dealt
16 with post October of 2006 is irrelevant. Has
17 nothing to do with this case.

18 THE COURT: So you're still talking about
19 the video?

20 MR. HULSLANDER: Yeah, I'm talking about
21 the video because --

22 THE COURT: Okay.

23 MR. FIRST: Your Honor, you did rule. Now
24 you have greater context for everything and there
25 are other rulings that suggest how you feel about

1 these issues, so --

2 MR. STEVENS: I join in those objections.
3 Thank you.

4 THE COURT: All right. All right.
5 Court's in recess.

6 (Proceedings in recess at 9:19 a.m.)

7 (Open Court.)

8 THE COURT: Okay. Uhm, apparently our
9 juror overslept. And when Terry called he was --
10 she woke him up. So -- and he only gets around by
11 public transportation. So I've just contacted our
12 security, they're going to go pick him up. He
13 lives in Solvay, about ten minutes away. So we're
14 going to wait 'til he gets here. I apologize.

15 I'm going to bring the jurors in and just
16 alert them on the record that we're going to wait
17 for the juror. Okay. Thank you. Why don't you
18 bring them out. Thank you.

19 (Jury seated in the jury box at 9:27 a.m.)

20 THE COURT: Okay. We have a little
21 problem. One juror didn't set an alarm, I don't
22 think, this morning. Rides public transportation.
23 So we are having court security go pick him up, so
24 we will be delayed a little bit. I wanted to let
25 you know that on the record.

1 So it's going to be probably twenty minutes.
2 You can leave the courtroom if you like. I have
3 apples that I picked this weekend upstairs and I
4 will bring them to the jury room for you guys.
5 That's about all I can offer you. If you want to
6 leave, you can for twenty minutes because it will
7 be twenty minutes before they get there and back
8 again or fifteen minutes.

9 Don't talk about the case. Don't do any
10 independent research. Thank you.

11 (Jurors responded with "thank you.")

12 (Proceedings in recess at 9:30 a.m.)

13 THE COURT: Okay. Are we ready to
14 proceed?

15 MR. HIGGINS: We are, Judge.

16 THE COURT: Bring them in.

17 (Jury seated in the jury box at 10:05 a.m.)

18 THE COURT: Okay. So who's going to be
19 designated to call our juror in the morning?

20 TRIAL JUROR: I just told him he was
21 coming to live with me until this is over. I want
22 to make sure he is up.

23 THE COURT: We all want to know where you
24 went last night.

25 TRIAL JUROR: I didn't go nowhere.

1 THE COURT: I'm teasing you.

2 TRIAL JUROR: We'll all set our alarm.

3 THE COURT: Ready to proceed?

4 MR. HIGGINS: We are, Judge.

5 THE COURT: Okay.

6 MR. HIGGINS: Judge, at this time with the
7 Court's permission we would call Kelly Varano.

8

9 **KELLY VARANO**, having been called as a witness and
10 being first duly sworn, testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. HIGGINS:

14 Q. Kelly, good morning.

15 A. Morning.

16 Q. Kelly, how old are you today?

17 A. Forty-two.

18 Q. All right. And where were you born and raised?

19 A. I was born in Newport, Rhode Island.

20 Q. Okay.

21 A. And raised in Rome, New York.

22 THE COURT: Okay. Mr. Higgins signals to
23 speak up. I will do it also. Okay. Can you keep
24 your voice up?

25 THE WITNESS: Yes.

1 THE COURT: Pretend you are talking to the
2 people sitting over there. Thank you.

3 Q. Kelly, where do you live now?

4 A. Rome, New York.

5 Q. All right. And tell me a little bit about your
6 schooling?

7 A. I went through 12th grade, but got a GED in
8 '94.

9 Q. So how long after that, after 12th grade was
10 that, about eight years?

11 A. Yes.

12 Q. How many children do you have?

13 A. Four.

14 Q. All right. Tell me their names and ages?

15 A. Timothy is 24. Katie is 18. Kelsey 13. And
16 Jeremy 11.

17 Q. And tell me which one of those lives with you
18 now?

19 A. Kaitlin, Kelsey and Jeremy.

20 Q. All right. Tell me, are they in school now?

21 A. Yes.

22 Q. All right. Where do they go to school?

23 A. Kaitlin goes to college at Mohawk Valley
24 Community College. Kelsey goes to Oriskany High
25 School, and Jeremy goes to Oriskany Elementary.

1 Q. Do you know a Chuck Bohn?

2 A. Yes.

3 Q. All right. Who is Chuck Bohn?

4 A. My fiancé, and Jeremy and Kelsey's father.

5 Q. How long have you been engaged to Chuck Bohn?

6 A. Sixteen years.

7 Q. What's that about?

8 A. Just -- I don't know.

9 Q. Okay. Uhm, who is the primary caretaker for
10 Jeremy, Kelsey and Kaitlin?

11 A. I am.

12 Q. How long has that been true?

13 A. Always.

14 Q. Kelly, do you drive?

15 A. I do, but just in the city where I live.

16 Q. Do you have a license?

17 A. I do.

18 Q. Why don't you drive other places?

19 A. I just never -- never got -- I don't know, just
20 don't.

21 Q. Okay. While you've been here, who's been
22 watching Jeremy when he gets off the bus?

23 A. Uhm, my other kids or his grandparents.

24 Q. I want to take you back to May of 2006. Okay.
25 Are you with me?

1 A. I am.

2 Q. All right. How old was Jeremy back then?

3 A. Three and a half.

4 Q. All right. Kaitlin?

5 A. Eight.

6 Q. Okay. And Kelsey?

7 A. Five and a half.

8 Q. All right. Do you remember, in May of 2006,
9 Jeremy coming to you and saying something about his
10 gum?

11 A. Yes.

12 Q. Can you tell us about that?

13 A. He woke up in the morning and he said that his
14 left side hurt and his gum was swollen.

15 Q. All right. So what did you do when he told you
16 that?

17 A. I called his pediatrician.

18 Q. Okay.

19 A. And got him in to the doctors.

20 Q. Who was his pediatrician?

21 A. Dr. Vivienne Taylor.

22 Q. How long had she been his pediatrician?

23 A. Since birth.

24 Q. She still his pediatrician today?

25 A. Yes.

1 Q. All right. So you called Dr. Taylor. What
2 happened next?

3 A. She got me an appointment to come in and see
4 her, and she told me that she thinks he has an abscess
5 tooth, that he needs to see a dentist.

6 Q. What else?

7 A. She gave me a prescription for penicillin.

8 Q. And then what happened next?

9 A. Then I made an appointment with my daughter's
10 dentist, Dr. Patel, for him to go see him.

11 Q. Let me go back with Dr. Taylor. Do you
12 remember how Jeremy was when he went there? In
13 general?

14 A. He was fine.

15 Q. Okay. Did Dr. Taylor restrain Jeremy?

16 A. No.

17 Q. Okay. Tell me about the -- tell me about Dr.
18 Patel. Describe his office for me.

19 A. His office?

20 Q. Yeah.

21 A. His office is just very small.

22 Q. Okay.

23 A. Go up -- it's a house. And his office was on
24 the upper part.

25 Q. Okay.

1 A. You go up the stairs and the receptionist desk
2 is right in front of the stairs, and then there is the
3 whatever --

4 Q. Where they do the work?

5 A. Then the waiting room is on the right.

6 Q. How long did it take you to get Jeremy over to
7 Dr. Patel?

8 A. About twenty minutes.

9 Q. I'm sorry. That's a bad question. How many
10 days elapsed between the time that you --

11 A. Oh.

12 Q. -- went from Dr. Taylor to Dr. Patel?

13 A. A day or two.

14 Q. How was Jeremy doing during that day or two?

15 A. He was fine.

16 Q. Okay. Well, let me ask you some specific
17 questions. Did he have any swelling in his face or
18 mouth during that time?

19 A. No.

20 Q. All right. Did he have some swelling in his
21 gum on that morning when he talked to you?

22 A. When he initially told me before Dr. Taylor's,
23 yes.

24 Q. All right. And what had happened to that
25 swelling in the next few days?

1 A. Well, then he started taking the penicillin and
2 it went down and he didn't -- he wasn't in pain or
3 there wasn't swelling when he went.

4 Q. And who went with -- tell me about the visit
5 with Dr. Patel?

6 A. I was standing outside the door, which is you
7 can stand in one spot and look in the whole office.
8 And I was standing outside the door. Jeremy was in
9 the chair, but he wouldn't open his mouth.

10 Q. Okay. What did -- when you say he wouldn't
11 open his mouth, what was he doing?

12 A. He was just turning his head and covering his
13 mouth.

14 Q. Okay. Was he screaming?

15 A. No.

16 Q. Crying?

17 A. No.

18 Q. Was he out of control?

19 A. No.

20 Q. Would you say he was being uncooperative?

21 A. Yes.

22 Q. Okay. So how far away were you from Jeremy
23 then? How many feet?

24 A. Six to eight feet.

25 Q. Okay. What happened then?

1 A. So then Dr. Patel told me that he would have to
2 go see a pediatric dentist --

3 Q. Okay.

4 A. -- because he was being uncooperative.

5 Q. All right. And did he mention a name?

6 A. Told me Small Smiles.

7 MR. McPHILLIAMY: Objection. Hearsay.

8 THE COURT: Overruled.

9 Q. What did he say?

10 A. Small Smiles.

11 Q. Okay.

12 MR. HIGGINS: Chuck, may I please have
13 Exhibit 1134? If we can scroll down to the bottom
14 left-hand corner, please. Blow that up a little
15 bit. Thank you very much.

16 Q. Okay. Do you see there it says, appears to say
17 refer to child specialist, Small Smiles. You see
18 that?

19 A. Yes.

20 Q. Is that consistent with your memory?

21 A. Yes.

22 Q. All right. While we got this up, let's look at
23 a few other things. Did -- let me scroll down a
24 little bit, please. I'm sorry. Thank you. Says
25 there today on examination the swelling is down. Do

1 you see that?

2 MR. HIGGINS: Hold on. I will get it for
3 you.

4 Q. There it is.

5 A. Yes.

6 Q. Is that consistent with your memory?

7 A. Yes.

8 Q. All right. And says patient very, very
9 uncooperative. Uhm, would you agree that he was being
10 uncooperative?

11 A. He was being uncooperative as not opening his
12 mouth, but he wasn't screaming or crying or anything.

13 Q. Okay. Uhm, then --

14 MR. HIGGINS: Chuck, if you can scroll up
15 a little, please. Thank you.

16 Q. Uhm, it says patient's doctor put him on
17 antibiotics since Wednesday. Tooth abscess, question
18 mark. Do you see that?

19 A. Yes.

20 Q. Is that consistent with your memory?

21 A. Yes.

22 Q. Then doctor suggested to see dentist after ten
23 days. Uhm, you see that?

24 A. Yes.

25 Q. Is that consistent with your memory?

1 A. Yes.

2 Q. Okay. Were you given Jeremy's -- his
3 penicillin and his antibiotics?

4 A. Yes.

5 Q. Okay. Uhm, what did Dr. Patel tell you about
6 Jeremy's mouth or what was wrong or something like
7 that?

8 A. He didn't really say because he couldn't really
9 get a good look at because Jeremy wouldn't open. He
10 probably got a look. I don't know how well.

11 Q. Okay. How much time do you think Dr. Patel had
12 to look in Jeremy's mouth based upon what you saw?

13 A. From the time he went in the chair?

14 Q. Yeah.

15 A. Seven minutes.

16 Q. Okay. All right. Dr. Patel tells you to go to
17 Small Smiles?

18 A. Yes.

19 Q. What did you do next?

20 A. So then I called Small Smiles to see if he
21 could get in to an appointment there.

22 Q. Okay. Then what happened?

23 A. I took him to Small Smiles.

24 Q. Okay. Let me just back up on this. Did Chuck
25 go with you to Dr. Patel's office?

1 A. No.

2 Q. How do you know that?

3 A. Because I remember that he drove -- he drove me
4 the night before to show me where it was because he
5 wasn't going to be able to take me, so -- and I don't
6 drive, so he showed -- it wasn't that far from my
7 house.

8 Q. Okay.

9 A. So he took me the night before.

10 Q. Okay.

11 A. He thinks he went there, but he didn't.

12 Q. Okay. Uhm, all right. Let's go back to the
13 Small Smiles visit. If I was to --

14 MR. HIGGINS: Chuck, we are fine with
15 that.

16 Q. If I was to suggest May 23rd, 2006, as Jeremy's
17 first visit at Small Smiles, does that sound about
18 right to you?

19 A. Yes.

20 Q. Okay. How was Jeremy on that day before he
21 went to Small Smiles?

22 A. Normal.

23 Q. Okay. So tell me what that means?

24 A. You mean like if he was in pain or --

25 Q. Yeah. Was he in pain?

1 A. No.

2 Q. Was he screaming and yelling?

3 A. No.

4 Q. What about his face, was it swollen?

5 A. No.

6 Q. Eating habits?

7 A. Same as normal.

8 Q. Okay. What about his normal activities?

9 A. Same.

10 Q. Okay. Who went to the first Small Smiles
11 visit?

12 A. Chuck drove me and Jeremy.

13 Q. Okay. Tell me about your first impressions of
14 Small Smiles?

15 A. It was very nice when you walked in. It's very
16 kid friendly, colorful.

17 Q. Okay. What did you think?

18 A. I thought it was a nice place.

19 Q. Uhm, we heard some testimony about people
20 lining up to get in. Was that consistent with what
21 you saw when you went there?

22 A. No.

23 MR. FIRST: Object to the form.

24 THE COURT: Overruled.

25 Q. All right. Tell me about what you did when you

1 first got in there?

2 A. I went in and went to the reception desk,
3 signed Jeremy in, they gave me paperwork to fill out.

4 Q. Okay. Was that on a clipboard or something?

5 A. Yes.

6 Q. All right. Did you do that?

7 A. Yes.

8 Q. Okay. What happened next?

9 THE COURT: Just one second.

10 A. Can you repeat the question?

11 Q. Yes. I think I said tell me what happened next
12 after you signed the clipboard, the forms?

13 A. I went back and sat in the waiting room area.

14 Q. Okay. Where was Jeremy?

15 A. Jeremy was with me on my lap.

16 Q. Okay. Tell me how he was then?

17 A. He was fine. Acting fine.

18 Q. Okay. Well, when you say he was fine, I'm
19 going to ask you to give me a little bit more on that.
20 Okay. Was he screaming and crying?

21 A. No.

22 Q. Was he out of control?

23 A. No.

24 Q. What was he doing?

25 A. He just sat on my lap.

1 Q. Okay. Face red?

2 A. No.

3 Q. Swollen face?

4 A. No.

5 Q. Okay. What happened next?

6 A. Then the lady, I don't know who she was, if she
7 was a hygienist or who she was, called Jeremy's name.

8 Q. And then?

9 A. I took him to the door, carried him to the door
10 where she was. And I proceeded to go back with them.
11 And they told me that the parents couldn't go in the
12 room.

13 Q. What did you say about that?

14 A. I asked why. And she said that the parents --
15 the child sometimes acts worse when the parents are in
16 the room.

17 Q. What did you think?

18 A. I thought that that --

19 MR. FIRST: Object to what she thinks.

20 THE COURT: Overruled.

21 A. I thought it was odd because he was my fourth
22 child and I've always been able to go into rooms with
23 my other three.

24 Q. Okay. Did you say anything else at that time?

25 A. No. They just said that I couldn't go in, so

1 they took Jeremy back to the wherever.

2 Q. Okay. And when they took Jeremy from you, how
3 was he?

4 A. He was fine. He wasn't screaming or anything.

5 Q. Okay. Uhm, what happened next?

6 A. Then about ten minutes later Dr. Bonds came to
7 the door.

8 Q. Okay. And is Dr. Bonds in the courtroom today?

9 A. Yes.

10 Q. And is he sitting in the back against the wall
11 there?

12 A. Yes.

13 Q. All right. What happened next?

14 A. He came to the door and said that Jeremy was
15 being uncooperative and that they have to put him in a
16 papoose.

17 Q. All right. Now, was that at the door or did he
18 take you back in the room?

19 A. No, he took me back into a room.

20 Q. Okay. Uhm, he said Jeremy was being
21 uncooperative?

22 A. Yes.

23 Q. And what else?

24 A. That they would need to put him in a papoose.

25 Q. Did he tell you anything about the risks of the

1 papoose?

2 A. No. He had a piece of paper and he told me
3 just to put my initials where the Xs are and sign at
4 the bottom. And there was like a picture on the
5 bottom of a papoose, but it was very distorted.

6 Q. Okay. Uhm, did he mention anything to you
7 about whether there were risks or not?

8 A. No. He told me there were no known risks to it
9 and it was for the safety of Jeremy.

10 Q. All right. Did he ask you any questions about
11 Jeremy at all?

12 A. No.

13 Q. Did he tell you that Jeremy had been moved into
14 a quiet room?

15 A. No.

16 Q. Did he tell you that Jeremy was out of control?

17 A. He didn't say out of control. He said
18 uncooperative.

19 Q. Okay. Did he give you the chance to go back
20 and see Jeremy and to see how he really was?

21 A. No.

22 Q. Did he have a papoose board that he would show
23 to you so you could see what it looked like?

24 A. No.

25 Q. What about a video of a child being put into a

1 papoose, did they have that for you there?

2 A. No.

3 Q. Did he ask you anything about Jeremy, like what
4 color he likes or, you know, what kind of kid he is,
5 maybe how I can talk to him or anything like that?

6 A. No.

7 Q. How about whether he had a fever? Anybody ever
8 ask you whether he had a fever at that time?

9 A. No.

10 Q. Anybody ask you what had been going on with
11 Jeremy in the last two or three days?

12 A. I don't remember if he asked that. He may
13 have.

14 Q. Okay. Uhm, what did you know about a papoose
15 at that point in time at that first meeting?

16 A. I didn't know anything about a papoose at that
17 time.

18 Q. Okay. Did you ask him any questions?

19 A. I just asked why they would have to put him in
20 that and he said it was for the safety of Jeremy.

21 Q. Did he offer to put the treatment off for
22 another day?

23 A. No.

24 Q. Did he tell you that you had the chance to get
25 this done at a hospital?

1 A. No.

2 Q. Ever mention the phrase Early Childhood Caries
3 to you?

4 A. No.

5 Q. When's the first time you ever heard that
6 phrase?

7 A. I didn't hear that until I was in court here.

8 Q. Okay.

9 A. I haven't heard that.

10 Q. Okay. What about dental abscess, did you ever
11 hear that phrase from Dr. Bonds?

12 A. No.

13 Q. Okay. So how long did this first meeting last
14 with Dr. Bonds in that back room?

15 A. I don't -- like five to seven minutes. Not
16 long.

17 Q. And --

18 A. I signed the paper.

19 Q. Okay. Why did you sign those papers?

20 A. I trusted that they were pediatric dentists and
21 that that's what they do. If they said it was for the
22 safety of him, I didn't -- I don't know.

23 Q. What about the fact that they said that there
24 were no known risks to the procedure?

25 A. Right, I didn't think there was any risks, so

1 -- and I trusted that they knew that, they do that.

2 Q. Why did you think they were specialists?

3 A. That's what Dr. Patel told me, that he needed
4 to go to a pediatric dentist, so I thought they were
5 pediatric dentists.

6 Q. Did Dr. Bonds ever say why don't you go back
7 and talk to Chuck about this or anything like that
8 during that first meeting?

9 A. No.

10 Q. How much time did he give you to sign the
11 papers?

12 A. That I was in the room?

13 Q. Yeah.

14 A. Like, I don't know, I was in there five to
15 seven minutes, not long.

16 Q. Okay.

17 MR. HIGGINS: Chuck, can I have 199,
18 please, and the 5/23 protective immobilization
19 restraint form, please.

20 THE COURT: Is that last exhibit in
21 evidence?

22 MR. HIGGINS: 199?

23 THE COURT: 1134.

24 MR. HIGGINS: Yes, I believe it was Dr. --

25 MR. FIRST: We offered it and it came in

1 under a different number, Judge.

2 MR. HIGGINS: That was Dr. Patel's notes.
3 It came in yesterday under Old FORBA.

4 THE COURT: Another --

5 MR. McPHILLIAMY: Old FORBA 1050.

6 THE COURT: Okay.

7 BY MR. HIGGINS: (Cont.)

8 Q. Kelly, we put up the 5/23 consent for
9 protective immobilization, Exhibit 199. Do you
10 recognize that form?

11 A. Yes.

12 Q. And is that the form they asked you to sign at
13 the first -- that first meeting with Dr. Bonds?

14 A. Yes.

15 Q. Now, let me ask you, when he came in were any
16 of these boxes checked?

17 A. They were all checked through my signature
18 where my initials are.

19 Q. Okay. And, Dr. Bonds, did he ever tell you
20 what the immediate diagnosis was that required
21 protective immobilization?

22 A. No.

23 Q. Did he ever tell you what the limited
24 treatment -- what immediate limited treatment is
25 necessary?

1 A. No.

2 Q. And did he tell you how a dentist or staff
3 would be at risk or Jeremy would be at risk, that they
4 would need this papoose?

5 A. He didn't say why. He just said it was for the
6 protection of him and Jeremy.

7 Q. Ever mention the word "emergency" to you?

8 A. No.

9 Q. What about tell-show-do, we heard some talk
10 about that in this trial, did he ever mention
11 tell-show-do to you?

12 A. No.

13 Q. All right. Did he tell you that you had to
14 sign that form?

15 A. He said that I have to sign it for them to see
16 what's wrong with Jeremy so that they could see what
17 -- you know, what was going on with him.

18 Q. Okay. So did you feel you had any choice in
19 this?

20 A. No.

21 Q. Uhm, when it says there I understand that there
22 are no known risks to the immobilization procedure,
23 did you believe that was true at the time you signed
24 this form?

25 A. Yes.

1 Q. Would you have allowed Jeremy to be restrained
2 if you had known what you heard in this courtroom?

3 A. Absolutely not.

4 Q. Why not?

5 A. I would never put my child through that. He's
6 suffered.

7 Q. Okay. Let's talk about heart rate. Anybody
8 ever mention heart rate to you?

9 A. No.

10 Q. Uhm, did anyone ever tell you that he needed a
11 heart rate monitor?

12 A. No.

13 Q. What about the phrase oxygen saturation, did
14 anyone mention that to you?

15 A. No.

16 Q. Uhm, okay. So after this first meeting with
17 Dr. Bonds, what happens next?

18 A. After the first meeting?

19 Q. Yes.

20 A. Then I went back into the waiting area. I
21 signed the papers. Went back into the waiting area.
22 I was very nervous because I just -- I've never heard
23 of papoose. It didn't sound like a horrible thing. I
24 didn't know, and I was nervous and I did go outside
25 and have a couple of cigarettes to calm my nerves a

1 little.

2 Q. All right. And then?

3 A. And I came back in and they called me back in
4 about ten minutes after that.

5 Q. Okay.

6 A. And it was Dr. Bonds again.

7 Q. Okay. And where did he call you back in?

8 A. Into that same room that we were, and he had a
9 list of things that were wrong with Jeremy.

10 Q. Okay. And how big was the list?

11 A. I don't know. Like eleven, twelve things that
12 had to be done.

13 Q. All right. What happened next?

14 A. I had to sign the paper.

15 Q. Okay.

16 A. And then that was it and he went back to
17 wherever Jeremy was and I went back to the waiting
18 room.

19 Q. Okay. Let me ask you this. When Dr. Bonds
20 comes back that second time, what does he tell you
21 about Jeremy the boy, how the boy is doing?

22 A. How what?

23 Q. How Jeremy, the child, not the teeth, but
24 Jeremy the child, how was the child doing, did he tell
25 you anything about Jeremy at all?

1 A. No.

2 Q. All right. Did he tell you that Jeremy's heart
3 rate at that point had gone to 200?

4 A. No.

5 Q. Did he offer for you to go back and look and
6 see how your son is doing?

7 A. No.

8 Q. What do you remember being discussed during
9 that second meeting?

10 A. I just remember that he had the list of things.

11 Q. Okay.

12 A. And I asked him if it was from gummy bears
13 because he liked gummy bears, and he said that it
14 could be from gummy bears and to use gauze after he
15 eats them and wipe his teeth.

16 Q. Okay. What about the treatment? Did he tell
17 you what he was planning to do that day?

18 A. I don't remember. He might have. I can't say.

19 Q. Okay. Do you remember, have you heard the
20 phrase pulpotomy in this courtroom?

21 A. Yes.

22 Q. When is the first time you heard that phrase?

23 A. In this courtroom.

24 Q. Did anyone at Small Smiles ever mention
25 anything to you about a pulpotomy?

1 A. No.

2 Q. Did you know what it was before this trial
3 started?

4 A. No.

5 Q. All right. Tell me -- tell me about the people
6 at Small Smiles, what were they like?

7 A. They weren't child friendly.

8 Q. What does that mean?

9 A. I don't think. I didn't think that they were
10 very nice.

11 Q. Well --

12 A. I just -- none of them had smiles. None of
13 them tried to make a connection with Jeremy or me.

14 Q. Well, what do you mean by that? Give us some
15 examples.

16 A. I don't --

17 Q. If you can. What about the receptionist, first
18 person you see?

19 A. The receptionist was very rude, I think.

20 Q. Why do you think that?

21 A. It was kind of like they wanted you to sign it,
22 go, and in and out.

23 Q. Okay. All right. After Jeremy -- after Dr.
24 Bonds comes out for that second meeting on May 23rd,
25 what happens next?

1 A. Then he went back there and extracted two
2 teeth.

3 Q. Okay. Where did you go?

4 A. I went back to the waiting area.

5 Q. Okay. And what happened? At some point did
6 Jeremy come out of the back room?

7 A. Yes.

8 Q. How's your memory of what Jeremy was like when
9 he came out?

10 A. Clear.

11 Q. Why don't you tell us what Jeremy was like when
12 he came out of that back room?

13 A. Hysterical. Terrified. Screaming. His face
14 was red. He was bleeding.

15 Q. How did you feel about that?

16 A. At the time I felt the bleeding or whatever he
17 had to have, extractions, he had to do what he had to
18 do. Obviously, I didn't like to see my son in that
19 way.

20 Q. Well --

21 A. But --

22 Q. -- what did you do to try to console him?

23 A. The lady brang him out. And I went back. She
24 called me back in to the area. I went back there and
25 she was carrying Jeremy. He was screaming. I took

1 him from her and he instantly clung onto me and buried
2 his head and I just was consoling him, telling him
3 it's okay.

4 Q. How was that working?

5 A. It wasn't working.

6 Q. Okay. Had you ever seen Jeremy like that
7 before?

8 A. Never.

9 Q. All right. What about his face, did it look
10 like him?

11 A. No. His face was puffy and red.

12 Q. Okay. What did you do?

13 A. I had to make another appointment with the lady
14 for him to come back or whatever. And Jeremy's father
15 was in the waiting room and there's a door. He heard
16 him screaming and came in and took Jeremy from me so
17 that -- because I couldn't even hear the lady or I
18 couldn't hear anybody talking to me he was screaming
19 so loud. So he took Jeremy in the waiting area and I
20 made the appointment for him to come back.

21 Q. The person you made the appointment with, did
22 she say anything about the fact that Jeremy was
23 screaming so loud that Chuck had to come in?

24 A. No.

25 Q. Did she say anything like what can I do to help

1 or anything like that?

2 A. No.

3 Q. So you make the appointment, right?

4 A. Yes.

5 Q. What happens then?

6 A. When we get in the car and I asked Jeremy, what
7 happened. And, you know, 'cause his face was very
8 puffy and red. And he said that they put something in
9 his mouth to keep his mouth open.

10 Q. Okay. How was -- tell us how he was? Had he
11 gotten any better when he was in the car?

12 A. He was screaming hysterically for like twenty
13 minutes until finally, it takes an hour from Small
14 Smiles back to my house, so about twenty minutes of
15 the ride he was screaming and then once he calmed
16 down, I asked him what was wrong, what happened, and
17 he said that they put something in his mouth to hold
18 his mouth open.

19 Q. And during that twenty minutes, what are you
20 doing to try to console him?

21 A. Well, I was talking to him. But I was in the
22 front seat and he was in the back, so --

23 Q. Okay. So what are you thinking at this point
24 about Small Smiles?

25 MR. FIRST: Objection.

1 MR. HIGGINS: Withdrawn. I'll withdraw
2 that.

3 Q. Well, did you still think these were the
4 specialists that you had to go to?

5 MR. FIRST: Objection.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. Did you feel good about taking Jeremy back
9 again?

10 A. No.

11 Q. Okay. But you did, didn't you?

12 A. Yes.

13 Q. Why did you do that?

14 A. Because he was on Medicaid at the time and they
15 were the only ones that took Medicaid.

16 Q. Okay. And when you took Jeremy on the May 23rd
17 visit, was he still on penicillin?

18 A. Yes.

19 Q. All right. Do you remember calling back the
20 next day?

21 A. Yes.

22 Q. Tell me about that.

23 A. I didn't know if he had to -- I -- I didn't
24 know -- they extracted the tooth that was puffy, so I
25 just called and asked does he still need to take the

1 penicillin --

2 Q. Okay.

3 A. -- now that they pulled the tooth.

4 Q. All right. Who did you talk to?

5 A. The lady at the front -- it was a lady. I
6 don't know where she was.

7 Q. Dr. Bonds, did he get on the phone and talk to
8 you?

9 A. No.

10 Q. What about after Jeremy came out screaming, did
11 Dr. Bonds come out and say, Mrs. Varano, you know,
12 this is what we did, here's how it went, this is why
13 he's screaming, anything to talk to you after Jeremy
14 came out that day?

15 A. I don't think he came out after. It was just
16 the lady that brang him out.

17 Q. All right. And what did the lady say when she
18 gave you this screaming child?

19 A. That's it. Handed me him.

20 Q. Okay. Jeremy went back nine or ten times,
21 right?

22 A. Yes.

23 Q. All right. Let's talk about the first time
24 after this visit that you tried to get Jeremy to go
25 back to Small Smiles. Okay. Why don't you tell me

1 how that worked.

2 A. It was a fight. He thrashed himself on the
3 ground and screamed and no, no, no, he doesn't want to
4 go back.

5 Q. Okay. So what did you do?

6 A. We had to bring him. We took him.

7 Q. Okay. How did you get him in the car?

8 A. Bribe him.

9 Q. What does that mean?

10 A. Told him that we would take him to Chuck E.
11 Cheese after.

12 Q. Okay. And did there come a point when that
13 wouldn't work, in terms of you wouldn't even tell him
14 you were going to Small Smiles?

15 A. Well, after a couple of times we wouldn't say
16 that we were going. We just drove there and once we
17 got there --

18 Q. What happened?

19 A. -- he'd freak out for a minute, then we would
20 have to lie to him and bribe him and tell him we will
21 buy him toys and take him to Chuck E. Cheese.

22 Q. You said before you were the primary caretaker
23 for Jeremy since birth?

24 A. Yes.

25 Q. That first visit, did you feel that he was

1 terrified that first visit?

2 A. Yes.

3 Q. Why do you say that?

4 A. I've never seen Jeremy like that. He was out
5 of control screaming.

6 Q. Okay. When he went in, was he out of control?

7 A. When he first went in?

8 Q. Yeah.

9 A. No.

10 Q. All right. Uhm, for the next eight or nine
11 visits -- eight or nine visits when Jeremy would come
12 to Small Smiles -- go to Small Smiles, how would he be
13 when he came out of those visits?

14 A. Hysterically crying.

15 Q. Okay. Now, is that for every visit?

16 A. No, not every visit. Maybe half the time. He
17 was okay at some times.

18 Q. Okay. Uhm, after the first visit, did you keep
19 trying to get in the back room with your son?

20 A. I asked every single time and they told me no.

21 Q. Okay. And what did they tell you?

22 A. That they don't allow parents to go back
23 because the child acts out with the parents in the
24 room.

25 Q. Okay. Did you ever miss one appointment with

1 Small Smiles?

2 A. No.

3 Q. Did you ever break an appointment?

4 A. No.

5 Q. Was there a time when you were able to get in
6 the back room for one visit?

7 A. Yes.

8 Q. And was that earlier, later, or towards the
9 end?

10 A. I think it was towards the end.

11 Q. Okay.

12 A. I'm not exactly sure.

13 Q. Okay. Tell me what you remember about that
14 visit.

15 A. I remember that they told me that they were
16 going to give him nitrous and I've never heard of a
17 child getting nitrous, so I demanded that I go back
18 there with him for --

19 Q. Okay.

20 A. -- for nitrous.

21 Q. On that occasion they did let you go back,
22 correct?

23 A. Yes.

24 Q. Okay. And do you remember when you went back
25 there what you saw?

1 A. Jeremy was in the chair all loopy and told the
2 dentist that he smells like hot dogs.

3 Q. Okay. How old was Jeremy then?

4 A. I don't remember.

5 Q. All right. Let's assume that was a March 22,
6 2007 visit, he was roughly somewhere around five,
7 right?

8 A. Yes.

9 Q. Okay. Now, do you know whether Jeremy had
10 gotten nitrous when you went back there?

11 A. He had already had nitrous when I got there.

12 Q. Okay. Do you know whether they had already
13 done the work on that visit on his teeth?

14 A. I don't remember that. I don't remember. I
15 don't remember.

16 Q. All right. So you can't say one way or the
17 other --

18 A. No.

19 Q. -- is that fair?

20 A. Yes.

21 Q. Did Jeremy ever tell you that one of his wrists
22 hurt after going to Small Smiles?

23 A. Yes.

24 Q. Tell us about that.

25 A. He just told me that his wrist hurt.

1 Q. Okay. And when did he tell you that?

2 A. After he came out of the -- of his appointment.

3 Q. Okay. Do you remember what specific
4 appointment that was?

5 A. I don't remember.

6 Q. All right. When he told you that his wrist
7 hurt, or one of his wrists hurt, what did you do then?

8 A. I just checked his wrist and I didn't see any
9 marks or bruises or anything and --

10 Q. Okay. Uhm, later in the day, did he mention
11 that again?

12 A. No. Just the one time in the car and then when
13 we got home he said it again.

14 Q. Okay. What did you do then?

15 A. That's when I checked.

16 Q. Okay. All right. Was there a point when you
17 had asked the people at Small Smiles to do two
18 fillings instead of one or something like that on one
19 day as opposed to more than one day?

20 A. Yes.

21 Q. Can you tell the jury about that, please?

22 A. They kept telling me I had to keep coming back
23 every week and I didn't drive so I asked them, 'cause
24 the first visit or the second visit, I don't remember
25 which one, they did three fillings. So I asked them

1 if they could just do two fillings at one time instead
2 of having to keep coming back and they told me no.

3 Q. Okay. Did you ever want Jeremy to get all this
4 treatment done at once in terms of all that treatment,
5 all those --

6 A. All eleven teeth?

7 Q. Yeah.

8 A. No.

9 Q. Do you believe that Jeremy suffered during his
10 time at Small Smiles?

11 A. Yes.

12 Q. All right. Tell us why?

13 A. I think that he was terrified at the time of
14 having to go through that. I still -- I don't know
15 what really happened back there. I don't know.

16 Q. All right. Uhm, and how long do you think
17 Jeremy suffered from this treatment at Small Smiles?

18 A. What do you mean?

19 Q. Well, at some point in time Jeremy stopped
20 going to Small Smiles after March 7th, 2008, correct?

21 A. Yes.

22 Q. That was because you had received a phone call,
23 correct?

24 A. Yes.

25 Q. Okay. And after that time how did Jeremy do,

1 did he do better or was he -- do you think he suffered
2 after that time?

3 A. After I received the phone call I --

4 Q. Don't say anything about the phone call. Okay.
5 But after that time, go ahead.

6 A. Uhm, when he went to his next dentist?

7 Q. Yeah.

8 A. He was fine.

9 Q. All right. That was January 2009, correct?

10 A. Yes.

11 Q. All right. Let's talk about the next dentist.
12 Was that a Dr. Ballini?

13 A. Yes.

14 Q. All right. How does Jeremy do with Dr. Ballini
15 now?

16 A. Jeremy does wonderful with Dr. Ballini.

17 Q. Did you go to the first visit with Jeremy and
18 Dr. Ballini?

19 A. Yes.

20 Q. Why don't you tell us about that.

21 A. I just went in with him and Dr. Ballini
22 explained everything with him.

23 MR. McPHILLIAMY: Objection. Hearsay.

24 THE COURT: Overruled.

25 Q. Go ahead.

1 A. He explained everything that he was going to
2 do. Jeremy felt very comfortable with him. He didn't
3 -- he was not uncooperative. He wasn't out of
4 control.

5 Q. Okay. How were the people at Dr. Ballini's
6 office?

7 A. Very nice.

8 Q. All right. Did Dr. Ballini ever restrain
9 Jeremy?

10 A. Restrain him?

11 Q. Yeah.

12 A. No.

13 Q. Anybody ever restrain Jeremy other than Small
14 Smiles?

15 A. No.

16 Q. All right. How about Jeremy's fear and his
17 terror when he went to Dr. Ballini, did you see any of
18 that?

19 MR. McPHILLIAMY: Objection. Form.

20 THE COURT: Overruled.

21 A. No.

22 Q. Okay. Did Jeremy have any trouble getting
23 treatment with Dr. Ballini?

24 A. No.

25 Q. All right. How has he been -- I mean does he

1 still go see Dr. Ballini?

2 A. Yes.

3 Q. And does he come out screaming or anything like
4 that?

5 A. No.

6 Q. All right. So would you say that he's able to
7 go to see the dentist now?

8 A. Yes.

9 Q. Okay. And did you have any trouble getting in
10 the back room with Dr. Ballini?

11 A. No. I just went back there just like I was
12 going to at Small -- I just assumed you could.

13 Q. Okay. How's Jeremy doing now?

14 A. Jeremy's doing well now.

15 Q. He's going to be in later to talk to us for a
16 little bit?

17 A. Yes.

18 Q. How do you think he's going to do?

19 A. I think he's going to do okay.

20 Q. Okay. Uhm, let me ask you, let me just go back
21 a little bit. There's been a lot of testimony in
22 court here about Jeremy's teeth. And his front teeth.
23 Okay. Tell us as of the first visit to Small Smiles
24 what was the condition, say May 23rd, May 17th, what
25 was the condition of Jeremy's two front teeth?

1 A. His one front tooth had like discoloration on
2 the bottom.

3 Q. Okay. Was it one or two, if you know?

4 A. The discoloration was just on the one.

5 Q. Was there a space of some type?

6 A. There was a space in between his two.

7 Q. Okay. Uhm, did you -- what -- did you know
8 what that was?

9 A. I didn't know. I just assumed it was like
10 decay.

11 Q. Okay. Do you have any dental training?

12 A. No.

13 Q. All right. Did you know anything about plaque
14 staining a tooth or anything like that?

15 A. No.

16 Q. All right. Let me ask you to assume that Chuck
17 Bohn, your fiancé, said in a deposition that Jeremy's
18 teeth were rotting. Okay. What do you have to say
19 about that?

20 A. It was not rotting. It was -- it was
21 discolored. It may have been decay. It was not
22 rotted.

23 Q. Okay. Do you know what the condition was in
24 terms of whether it was decay or discoloration or just
25 --

1 A. I don't know what it was now. But it was
2 discolored. It was brownish color.

3 Q. Okay. All right. Uhm, did anyone at Small
4 Smiles ever ask you about that?

5 A. I don't remember.

6 Q. Okay. All right. Did you ever talk to Jeremy
7 about how you may have felt about dental care?

8 A. No.

9 Q. Okay. Sure about that?

10 A. I'm positive.

11 Q. Okay.

12 MR. HIGGINS: Chuck, let me have Exhibit
13 199.

14 Q. Kelly, let me just go over some of the things
15 in the chart on the first page --

16 MR. HIGGINS: Chuck, can we just pull up
17 the language, please.

18 Q. Okay. Kelly, can you see that?

19 A. Yes.

20 Q. All right. You recognize your handwriting?

21 A. Yes.

22 Q. It says penicillin/I and B abscess. Do you see
23 that?

24 A. Yes.

25 Q. Is that what you wrote on May 23?

1 A. Yes.

2 Q. Where did you get that information from?

3 A. I don't know if it was Dr. Taylor or Dr. Patel,
4 one of them told me I and B.

5 Q. Do you know anything about tooth I and B, where
6 they are or anything at all?

7 A. I don't know.

8 Q. All right.

9 MR. HIGGINS: Chuck, let me just go
10 through to the next page. Next page, please.
11 Okay.

12 Q. Kelly, do you remember this treatment plan
13 authorization? Do you remember signing this?

14 A. Yes.

15 Q. All right. And you talked about some of the
16 boxes being checked, you see those Xs there on the --
17 going down the middle?

18 A. Yes.

19 Q. Okay. Those were all Xed for you before you
20 got there?

21 A. Yes.

22 Q. Then they just told you to fill in the
23 initials, correct?

24 A. Yes.

25 Q. These are your signatures, right?

1 A. Yes.

2 Q. There are a lot of signatures in the chart.

3 Does that mean you were consenting to this -- to these
4 treatments?

5 A. Yes.

6 Q. All right. Well, were you consenting based
7 upon what you were told?

8 A. Yes.

9 Q. All right. And were you ever told that they --
10 there were risks to these procedures?

11 A. No.

12 Q. That was with respect to restraints, correct?

13 A. Right.

14 Q. All right. And what about pulpotomies, ever
15 told about pulpotomies?

16 A. No.

17 Q. Okay. That's an easy one for you? You sure
18 about that?

19 A. I've never heard the word pulpotomy until I was
20 in -- in this courtroom.

21 Q. Okay. What about -- let's talk about local
22 anesthesia and Jeremy getting cavities done without
23 local anesthesia. Did anyone ever mention that to
24 you?

25 A. No.

1 Q. Did you ever know that Jeremy was getting teeth
2 done without local anesthesia?

3 A. No.

4 Q. What would you have done if you had known that?

5 A. I wouldn't have allowed it if I knew.

6 Q. Why not? Why not?

7 A. Because it's painful for a kid. I didn't know
8 that they did that without any anesthesia.

9 Q. Okay. All right.

10 MR. HIGGINS: Chuck, we can go to the next
11 page, please.

12 Q. Kelly, you don't dispute that your signature is
13 on all these consent forms, do you?

14 A. No, I signed them.

15 Q. Okay. Do you feel that you signed them with --
16 on full consent and with accurate information?

17 A. No.

18 Q. Why not?

19 A. Because they didn't give me the truth. There
20 was risks at that. If I would have known of any
21 risks, I would have never signed that.

22 Q. You did sign papers indicating there were risks
23 of local anesthetic, right?

24 A. Yes.

25 Q. And nitrous, you knew about that, correct?

1 A. Yes.

2 Q. Did you ever take Jeremy to any type of school
3 counsellor or therapist or psychologist about his fear
4 and his suffering while at Small Smiles?

5 A. No.

6 Q. Okay. Do you think it ever affected his
7 school?

8 A. No.

9 Q. Okay. Uhm --

10 MR. HIGGINS: Chuck, can I have page
11 thirteen, Exhibit 199, please.

12 Q. Kelly, did anyone ever ask if you would drive
13 Jeremy to either Rochester or Albany or some other
14 location to get work done in a hospital setting?

15 A. No.

16 Q. Would you have been able to do that, either you
17 or Chuck been able to do that?

18 A. I would have found a way.

19 Q. Okay. Why would you have found a way?

20 A. If I knew he was getting work without
21 anesthesia.

22 THE COURT: Have to speak up.

23 A. If I knew that he was getting work done without
24 any pain medicine, then, yeah, I would have rather him
25 be in a hospital.

1 Q. Okay. And that's even though you know there is
2 other -- there are serious risks with general
3 anesthesia, correct?

4 A. Yes.

5 Q. Okay. All right.

6 MR. HIGGINS: Judge, at this time I offer
7 into evidence Old FORBA Exhibits 1043 through 1048
8 which are photographs of Jeremy Bohn.

9 THE COURT: Any objection?

10 MR. HIGGINS: Sorry, 1042 through 1048.

11 MR. FIRST: Which one you offering?

12 MR. HIGGINS: All of them.

13 THE COURT: Exhibits 1043 through 1048
14 received.

15 BY MR. HIGGINS: (Cont.)

16 Q. Okay. We heard a lot of talk about Jeremy,
17 correct? Let's just show the jury who Jeremy is.
18 Let's start with 1043, please. All right. Can you
19 see that?

20 A. Yes.

21 Q. How old is Jeremy there?

22 A. Two.

23 Q. Two?

24 A. Yes.

25 Q. Okay. Let's go to Old FORBA 1044. All right.

1 How old is Jeremy there?

2 A. Five.

3 Q. Five. Okay. And let's go to the next 1045.

4 Okay. There he is. And how old is Jeremy there?

5 A. Six.

6 Q. Okay. Let's go to the next one. And how old

7 is he there?

8 A. Seven.

9 Q. Okay. Next picture, please. 1047. What's
10 going on with the teeth there?

11 A. He lost them.

12 Q. He lost them. Okay. So you can't see it on
13 this thing, but is there -- are his permanent teeth
14 coming in, you can't really see them but here?

15 A. Yes.

16 Q. Okay. And then let's try to get a little bit
17 more current, and his last picture 1048, how old is
18 Jeremy there?

19 A. Uhm, that was last year, so he was like ten.

20 Q. Okay. So we are pretty close to where he is
21 now?

22 A. Yes.

23 Q. Are those his permanent teeth? The two front
24 teeth, are they permanent?

25 A. Yes.

1 Q. Okay. All right. Uhm, let me ask you about
2 when you went to Small Smiles, did they ever indicate
3 that this -- this treatment was optional or not
4 necessary?

5 A. No.

6 Q. Was it your understanding, based upon the forms
7 you signed and your conversations, that all of the
8 treatment was necessary based upon what they told you?

9 A. Yes.

10 Q. Uhm, and you've heard in this courtroom that
11 the consent forms were not accurate, and you heard
12 there was a production scheme and the jury's heard a
13 lot of testimony on that, you heard that they were
14 tracking production per patient, performance reviews
15 were done on production, and things of that nature?

16 A. Yes.

17 Q. If you had known any of that, would you have
18 allowed Jeremy to go in to that Small Smiles office?

19 MR. FIRST: Object to the form.

20 MR. McPHILLIAMY: Object to form.

21 THE COURT: Overruled.

22 A. Absolutely not.

23 Q. Why not?

24 A. I think they took advantage.

25 Q. Did you trust these people?

1 A. I did. I did.

2 Q. Why did you trust them?

3 A. Because they're dentists. Every parent puts
4 their trust into a doctor or dentist, that I just -- I
5 trusted them.

6 Q. Okay. And what about the fact that you have
7 been told that they were pediatric specialists, did
8 they factor into that at all?

9 A. Yeah, I thought that they would --

10 MR. FIRST: Objection. Objection.

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

13 MR. HIGGINS: Okay.

14 MR. FIRST: Came from Dr. Patel.

15 Q. Had you been told by Dr. Patel that these were
16 pediatric specialists?

17 A. Yes. He told me they were, that he had to be
18 seen by a pediatric dentist because of his
19 uncooperate. And he told me Small Smiles.

20 Q. And that's where you went?

21 A. And that's where I went.

22 Q. Okay.

23 MR. HIGGINS: Judge, is this a good time
24 to break or no? I can keep going.

25 THE COURT: How much longer do you think

1 you will be?

2 MR. HIGGINS: Not long.

3 THE COURT: Why don't you finish up then.

4 MR. HIGGINS: Okay. Great.

5 BY MR. HIGGINS: (Cont.)

6 Q. Kelly, do you have any claim in this case?

7 A. No.

8 Q. Does Chuck have any claim in this case?

9 A. No.

10 Q. Uhm, if there was to be an allowance of damages
11 in this case, would any of that money go to you?

12 MR. McPHILLIAMY: Objection.

13 A. No.

14 THE COURT: Uhm, overruled.

15 Q. What about to Chuck?

16 A. No.

17 Q. How do you feel about Small Smiles now?

18 MR. McPHILLIAMY: Objection.

19 MR. FIRST: Objection.

20 THE COURT: Sustained.

21 Q. What do you want for Jeremy?

22 A. Just like every parent, I want the best for
23 him. I want him to further his education. I want him
24 to do well in life.

25 Q. Okay.

1 MR. HIGGINS: That's all I have.

2 THE COURT: All right. Thank you. Why
3 don't we take our morning recess. Fifteen
4 minutes. Be back at 11:15. Don't talk about the
5 case or do any research.

6 (Proceedings in recess at 11:10 a.m.)

7 (Open Court.)

8 MR. HIGGINS: Judge, before the jury comes
9 in, uhm, just before the jury comes in, I'd like
10 to make a motion, renew our motion in limine
11 specifically as to the car accident June 6, 2009.
12 As you know, we have not elicited proof that his
13 pain and suffering went beyond that.

14 THE COURT: There's no objection to that,
15 is there?

16 MR. NOWATNY: No objection, subject to the
17 stipulation I proposed that we heard. I need you
18 to clarify that before we started, but that's
19 fine.

20 THE COURT: Well, I don't think there was
21 a stipulation. So, yeah. But my proposal was
22 that if that comes in through some other witness,
23 which I don't think it's going to, then you can
24 put her back on the stand.

25 MR. NOWATNY: Fine.

1 THE COURT: Okay.

2 MR. NOWATNY: No objection.

3 THE COURT: Thank you. So the motion is
4 granted.

5 (Jury seated in the jury box at 11:27 a.m.)

6 THE COURT: Ready to proceed?

7 MR. NOWATNY: Yes, Your Honor. Defendants
8 would like to go in reverse order for inquiry of
9 this witness. It's my understanding that
10 plaintiff's counsel has graciously accommodated
11 us.

12 MR. HIGGINS: Of course, Judge.

13 TRIAL JUROR: Could you repeat what you
14 said? We didn't understand what he said.

15 THE COURT: Instead of going this way,
16 we're going to go counterclockwise with this
17 witness.

18 MR. NOWATNY: Reverse order. Your Honor,
19 I'd like to approach the witness and give her a
20 copy of the deposition transcript.

21 THE COURT: Okay.

22

23

24

25

1 CROSS-EXAMINATION

2 MR. NOWATNY:

3 Q. Good morning, Miss Varano. Prior to your going
4 to visit Dr. Taylor on May 17th, 2006, Jeremy had
5 never been to a dentist; is that correct?

6 A. Correct.

7 Q. And at that time he was about three and a half
8 years old, right?

9 A. Yes.

10 THE COURT: All right. You have to keep
11 your voice up.

12 Q. And at least two of your other children, your
13 two daughters were seeing Dr. Patel prior to May 17th,
14 2006, right?

15 A. Yes.

16 Q. Now, at the time, before you went to see Dr.
17 Patel, Jeremy had started to brush his teeth more
18 frequently than he had been for the months before,
19 right?

20 A. Before he went to see Dr. Patel?

21 Q. He was brushing even more frequently as we get
22 to this May 17, 2006 time frame, right?

23 A. I don't remember.

24 Q. Okay.

25 MR. NOWATNY: Your Honor, if I could, I'd

1 like to read from the witness's deposition page
2 97.

3 THE COURT: Are you going to refresh her
4 recollection with it?

5 MR. NOWATNY: Yes, she can take a moment
6 if she would like to look at page 97, 13 through
7 23.

8 MR. HIGGINS: Judge, while she's reading
9 that may I approach?

10 THE COURT: Yes.

11 (A discussion off the record at the Bench, all
12 counsel present.)

13 THE COURT: Does that refresh your
14 recollection?

15 THE WITNESS: Now that I've read it, it
16 was because of the gummies, yes.

17 BY MR. NOWATNY: (Cont.)

18 Q. Now, before you took Jeremy to Dr. Taylor on
19 May 17, 2006, you had actually seen some changes in
20 Jeremy's teeth, right?

21 A. Yes.

22 Q. You saw some brown discoloration on his teeth,
23 right?

24 A. Yes.

25 Q. You saw a gap in his two front teeth, right?

1 A. Yes.

2 Q. They just didn't look right to you, right?

3 A. Right.

4 Q. Now, you had noticed some changes in the
5 appearance of those teeth over the preceding year
6 before you went to Dr. Taylor's office?

7 MR. HIGGINS: Objection. Objection.

8 Motion in limine.

9 THE COURT: Uhm, overruled.

10 A. Can you repeat that?

11 Q. Yes. Over the year before you took your son
12 Jeremy to see Dr. Taylor on May 17th, 2006, you had
13 been seeing changes in the appearance of his teeth,
14 right?

15 A. Yes.

16 Q. And it was your impression at the time you got
17 your son to Dr. Taylor's office that those changes in
18 the appearance of his teeth were either from cavities
19 or decay, right?

20 A. I thought it was decay, yes.

21 MR. NOWATNY: Craig, would you go ahead
22 and put up Exhibit 362? Can you blow that up
23 some?

24 Q. This is the visit of May 17, 2006 to Dr.
25 Taylor. You took your son there because he'd woken up

1 the prior day and said he had some pain in his mouth
2 and you saw some swelling, right?

3 A. Yes.

4 Q. Your son is telling you on May 17, 2006, his
5 mouth hurts, he's got pain, and you were concerned,
6 right?

7 A. Yes.

8 Q. You looked in his mouth and you noticed some
9 swelling of his gums, right?

10 A. Yes.

11 Q. You see in here where Dr. Taylor under
12 subjective makes a note, mother states he does have
13 some tooth decay. And you did share that with her
14 based on what you had been seeing of your son's mouth
15 over the year before that visit, right?

16 A. Yes.

17 Q. Now, at the time of this visit it says under
18 assessment, patient with dental abscess. And that was
19 something that Dr. Taylor shared with you, right?

20 A. Yes.

21 Q. So you're at this visit, you've taken your son
22 in because he's got pain in his mouth, you've seen
23 swelling of his gums and she's telling you he may have
24 a dental abscess, that made sense to you, right?

25 A. Yes.

1 Q. Now, you also before you left her office got a
2 prescription for some antibiotics, right?

3 A. Yes.

4 Q. And over the years, you're a mother of four,
5 you had your children on antibiotics prior to this,
6 right?

7 A. Yes.

8 Q. And you understood that those antibiotics were
9 being prescribed because there was a concern of an
10 infection, correct?

11 A. Correct.

12 Q. So you're leaving Dr. Taylor's office on May
13 17th, 2006, with her telling you maybe a dental
14 abscess is present, he's got an infection requiring
15 antibiotics, correct?

16 A. Right.

17 MR. NOWATNY: Can you take us now, Craig,
18 to Exhibit 179. Blow it up a little.

19 Q. Now, this is the patient healthcare record
20 you've completed when you went to Dr. Patel's office
21 on May 19th, 2006. This is in your handwriting,
22 right?

23 A. Yes.

24 Q. And in here it says for what purpose, for what
25 purpose, abscess tooth, singular tooth, right?

1 A. Yes.

2 Q. Because when you met with Dr. Taylor it was
3 understanding that he had a tooth that might have an
4 abscess, right?

5 A. Right.

6 Q. You also note that your son was born premature
7 and spent a few weeks on a respirator in the hospital,
8 correct?

9 A. Right.

10 Q. Now, isn't it true your son did have some
11 developmental delay that was told to you by Dr. Taylor
12 when he was on --

13 MR. HIGGINS: Objection, Judge.

14 THE COURT: Sustained.

15 MR. NOWATNY: May we approach?

16 MR. HIGGINS: Request a curative
17 instruction.

18 (A discussion off the record at the Bench, all
19 counsel present.)

20 THE COURT: Sustain the objection.

21 MR. NOWATNY: Okay.

22 BY MR. NOWATNY: (Cont.)

23 Q. So when you first get to Dr. Patel's office,
24 this was your understanding what might be the problem
25 with Jeremy's mouth, that he has maybe an abscess

1 affecting one tooth; is that right?

2 A. That's right.

3 Q. Now, when you're at Dr. Patel's office, I think
4 you described it's a smaller office than Small Smiles,
5 right?

6 A. Yes.

7 Q. And you went to the examining room with Jeremy,
8 right?

9 A. I was outside of the examining room.

10 Q. You were at the door?

11 A. At the door.

12 Q. Okay. Door's open?

13 A. Door's open.

14 Q. You're six to eight feet away?

15 A. Approximately.

16 Q. Jeremy can see you, you can see Jeremy?

17 A. Yes.

18 Q. All right. And did you step forward towards
19 Jeremy at any point during that exam?

20 A. No.

21 Q. You could have, though, right?

22 A. Uhm, it was very small. You could -- where the
23 chair was, the doctor sat, and I was right here. I
24 mean it was a very small area.

25 Q. Let's do this. How about, am I about the

1 distance of the six to eight feet from you that you
2 were from Jeremy on May 19th?

3 A. Uhm, approximately.

4 Q. Okay. Either way, there was no question in
5 your mind Jeremy could see you during that
6 examination, right?

7 A. Well, he couldn't -- he was facing this way. I
8 was back here. So I could see him, but he couldn't
9 see me.

10 Q. Were you talking at all during the exam?

11 A. No.

12 Q. So while you're within six to eight feet of
13 your son with an open door and/or by the door, you're
14 observing your son shaking his head, not letting Dr.
15 Patel look in his mouth, right?

16 A. Yes.

17 Q. Closing his mouth and not opening it so he can
18 look inside, right?

19 A. Yes.

20 Q. And you saw your son reaching up with his hand
21 trying to brush away Dr. Patel's hand to try to
22 examine him, right?

23 A. Yes.

24 Q. That's with you six to eight feet away from
25 your son, right?

1 A. Yes.

2 Q. At the time of your visit with Dr. Patel, you
3 had had both of your daughters in to see him on prior
4 occasions, right?

5 A. Yes.

6 Q. And you never seen either one of them do
7 anything like that, right?

8 A. No.

9 Q. So Dr. Patel was able to successfully treat
10 both your daughters, as far as you knew, prior to
11 this?

12 A. Yes.

13 Q. Now, Dr. Patel, to your knowledge, is a general
14 dentist, correct?

15 A. Correct.

16 Q. Now, around the same time frame when -- let's
17 see -- maybe a few years earlier Kaitlin went to see a
18 Dr. Gordan Ruff?

19 MR. HIGGINS: Objection, Judge. Totally
20 irrelevant as to the motion in limine already
21 granted.

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

24 MR. NOWATNY: Well, Your Honor, I'd like
25 to approach on that.

1 THE COURT: Okay.

2 (A discussion off the record at the Bench, all
3 counsel present.)

4 THE COURT: Next question.

5 BY MR. NOWATNY: (Cont.)

6 Q. So during this visit with Dr. Patel, to your
7 knowledge, he wasn't able to provide Jeremy with any
8 type of dental treatment, right?

9 A. Right.

10 Q. He wasn't able to give a dental injection into
11 the gums, right?

12 A. No.

13 Q. Wasn't able to?

14 THE COURT: Little louder.

15 A. No.

16 Q. Wasn't able to do any kind of fillings or pull
17 any teeth, right?

18 A. Right.

19 Q. And your son had never been to a dentist where
20 anybody was looking inside his mouth trying to do
21 anything prior to this date, right?

22 A. Right.

23 Q. Now, because he hadn't done any treatment, your
24 son had never been to a dentist prior to that; isn't
25 it true you would not have any dental records on

1 Jeremy before you went to Small Smiles?

2 A. That's correct.

3 Q. All right. So when Mr. Leyendecker was in here
4 and asking questions about a reasonable dentist, Dr.
5 Bonds, you should get the records from a prior
6 treater, you don't have any prior records for -- from
7 a dentist to take to Dr. Bonds, correct?

8 A. Correct.

9 Q. Now you went into Small Smiles --

10 MR. NOWATNY: Can you put up Exhibit 21.

11 Q. You went to Small Smiles on May 23rd, 2006, at
12 the recommendation of Dr. Patel, right?

13 A. Yes.

14 Q. All right. And he recommended that you go
15 there because of the behaviors that he was
16 experiencing with Jeremy, right?

17 A. Right.

18 Q. Did he tell you he's got some problems with his
19 teeth, I cannot treat?

20 A. No.

21 Q. So --

22 MR. NOWATNY: Can you blow up just the
23 right half.

24 Q. Now, when you get to Small Smiles, you're asked
25 to fill out this form and this is all in your

1 handwriting up above your signature, right?

2 A. Yes.

3 Q. And at this time, Mr. Higgins brought this out,
4 you document he's on penicillin and he's got number I
5 and number B with abscess. Do you see that?

6 A. Yes.

7 Q. Okay. When you were at Dr. Taylor's, she
8 mentioned to you she observed what she thought to be a
9 tooth with an abscess, right?

10 A. Right.

11 Q. So now you've been to Dr. Patel's office,
12 apparently he had at least a moment or two he can look
13 in your son's mouth and he tells you I think he has
14 two teeth with possible abscess, right?

15 A. He didn't tell me that.

16 Q. Okay. So you made your own observation and
17 filled out this paperwork identifying tooth I and
18 tooth B with abscess?

19 A. He told me that possibly could be an abscess on
20 those two teeth.

21 Q. Okay. So Dr. Patel did have a chance to look
22 in your son's mouth and observe what he thought might
23 be two teeth with abscess before you got to Small
24 Smiles, right?

25 A. Right.

1 Q. Now, with respect to this form, can you --

2 MR. NOWATNY: Blow it up tight and get
3 into this bottom signature box. The signature
4 box.

5 Q. All right. So this form -- you worked in a
6 doctor's office, a couple of doctor's offices for
7 several years, right?

8 A. Yes.

9 Q. Had dental paperwork from patients come in and
10 going back and forth, right?

11 A. Yes.

12 Q. Had to accommodate a patient when they come in
13 and say, I'd like to talk to the doctors, you would be
14 one of the folks they have to talk to first, right?

15 A. Yes.

16 Q. Now --

17 MR. NOWATNY: Keep me on my box.

18 Q. Here pediatric dentistry management techniques
19 on page two, it says you read it and understood it,
20 that's one of the things you would have done when you
21 signed this box.

22 MR. NOWATNY: Can you take us now to
23 Exhibit 64.

24 THE COURT: Was that a question? You
25 waiting for an answer?

1 Q. That's your signature underneath there
2 acknowledging you read it?

3 A. Yes.

4 MR. NOWATNY: Thank you, Your Honor. Can
5 you take us to Exhibit 64. Blow it up a little
6 bit.

7 Q. Now, that was the history and information you
8 were asked to sign when you first got to Small Smiles,
9 right?

10 MR. HIGGINS: Judge, I object. This is
11 actually a later form. The patient management
12 form on May 23rd, 2006 had a hand-over-mouth form
13 and that will be seen on the original.

14 THE COURT: Shut this one off, please.

15 MR. NOWATNY: I have Exhibit 200, the
16 original chart. This is the back page of that.
17 Can you flip this over, Craig.

18 Q. When you first got to Small Smiles, there were
19 a variety of documents you were asked to review, fill
20 out and sign, right?

21 A. Yes.

22 Q. Just to orient everybody, this is the original
23 of the chart from Small Smiles that was previously
24 identified where we have the reference to pediatric
25 dentistry patient management techniques on page two of

1 this consent form. And that's your signature and
2 dating underneath it, right?

3 A. Right.

4 Q. Okay. Here is now page two of that form.

5 Okay. Now, this list of items when you signed page
6 one of this form you understood might be efforts or
7 activities utilized by the Small Smiles staff to treat
8 your son Jeremy on May 23rd, right?

9 A. Right.

10 Q. So you signed that form acknowledging that if
11 necessary you would expect that they may incorporate
12 any one of these methods used to provide the treatment
13 your son required that day, right?

14 A. Yes.

15 Q. Of this list, you understood physical
16 immobilization by the dentist, where the dentists
17 themselves might actually have to hold down your son,
18 you understood that, right?

19 A. I understood that, but I did not know the
20 risks.

21 Q. Okay. So you don't understand the risk when an
22 adult grabs your son to hold them down so that
23 something can be done for them what those risks might
24 be. Is that what you're telling me?

25 A. For the papoose I'm saying.

1 MR. NOWATNY: Move to strike as
2 nonresponsive. Let me ask my question again.

3 THE COURT: I think it was responsive to
4 the question, because the question was not
5 specific to the one, so I'm not going to strike
6 it. But go ahead and ask another question.

7 BY MR. NOWATNY: (Cont.)

8 Q. Come right back. Let's stick on number six.
9 You can see six, then seven and eight. Eight is
10 papoose, right?

11 A. Yes.

12 Q. Let's go with six. I want to talk about six.
13 Six says physical immobilization by the dentist. You
14 understand the term immobilization, right?

15 A. Yes.

16 Q. All right. So you understood that on May 23,
17 2006, if your son started putting his hand up to keep
18 the dentist from providing treatment like you had
19 observed at Dr. Patel's office, the dentists were
20 going to be allowed per your consent to grab that arm
21 and keep it out of the way, right?

22 A. Yes.

23 Q. They were going to be able to grab his legs and
24 keep them out of the way, right?

25 A. Yes.

1 Q. They were going to be able to hold down any and
2 all extremities in order to provide that care with
3 their physical hands, right?

4 A. Yes.

5 Q. You also understood that, depending on the
6 situation, the immobilization might be performed by
7 assistance as well, correct?

8 A. Yes.

9 Q. So not just a dentist, somebody you understood
10 was a doctor, but also non-doctor people were being
11 authorized by your signing this form to physically
12 hold your son down in order to provide treatment,
13 right?

14 A. Yes.

15 Q. Okay. Let's go down to the bottom of this.
16 You also see the reference to the papoose board and
17 Pedi-Wraps. So this is one of many forms. Let's
18 start with this one. Down below, if you have any
19 questions about any of the above techniques, please
20 ask. You were invited to talk to the staff or Dr.
21 Bonds at any time while Jeremy was at Small Smiles
22 about any one of those methods, right?

23 A. Yes.

24 Q. Note, if you do not agree with the above
25 methods listed, please let us know so that we may talk

1 to you about them. You understood that, right?

2 A. Yes.

3 Q. And it says look, you realize it might not be
4 possible to complete any dental work in a safe
5 environment if you don't consent to some of these
6 potential methods, right?

7 A. Right.

8 Q. Now, you're signing this document before Dr.
9 Bonds has treated your son at all, right?

10 A. Yes.

11 Q. So you've come into this Small Smiles clinic,
12 you had a rude receptionist, you're surrounded by
13 unfriendly people, you're being given forms to sign
14 involving we will physically hold your son down if we
15 need to treat him, and you stayed at Small Smiles with
16 your son for treatment, right?

17 A. Yes.

18 Q. Now, with respect to the treatment before it
19 was provided, before anything could be done with your
20 son, Dr. Bonds comes out to advise you that he can't
21 examine your son, he's not cooperating, we might need
22 to immobilize him with the papoose?

23 A. Right.

24 Q. Before he even gets to that conversation with
25 you, you've seen this form, you had your interactions

1 with the staff, they ask to take your son back to
2 another room without you present, right?

3 A. Right.

4 Q. You were nervous, your stomach hurt, you were
5 anxious enough to say, Chuck, get up and go back there
6 and check on your son, right?

7 A. Right.

8 Q. All that happened before you ever met my
9 client, Dr. Bonds, right?

10 A. Yes.

11 Q. Now, Dr. Bonds comes out to let you know your
12 son's been back here for ten minutes about, plus,
13 minus, right?

14 A. Right.

15 Q. Trying to examine him, he won't let us, I may
16 have to utilize the papoose in order to get his hands
17 out of my way so I can look in his mouth, right?

18 A. Right.

19 Q. You spent, I think you said, five or seven
20 minutes, I think, discussing that situation. True?

21 A. True.

22 Q. The issue came up about, well, maybe I'd like
23 to go back there. Can I go back there? And Dr. Bonds
24 informed you that might just get him a little more
25 upset, right?

1 A. Right.

2 Q. We know from your experience with Dr. Patel
3 when you were right there within six to eight feet,
4 your son was being uncooperative even with you around,
5 right?

6 A. That's right.

7 Q. So isn't it true that after Dr. Bonds, before
8 he's done any treatment, before he's placed your son
9 in the protective immobilization device, the papoose,
10 you were satisfied he had spent enough time with you
11 talking about the potential use of that papoose to
12 allow him to go back and examine your son while
13 placing him in the papoose?

14 A. He didn't tell me the risks. He didn't tell me
15 that his heart rate would go up. If I would have
16 known any of that, they would not have put my son in a
17 papoose.

18 MR. NOWATNY: I'd like to read from the
19 witness's deposition line -- excuse me, page 321.

20 THE COURT: Page 321.

21 MR. NOWATNY: 321.

22 THE COURT: Line?

23 MR. NOWATNY: Going over for context 321
24 line 19 through 322 line 10.

25 MR. HIGGINS: Judge, I had an objection to

1 this question.

2 THE COURT: Okay. Come on up.

3 (A discussion off the record at the Bench, all
4 counsel present.)

5 BY MR. NOWATNY: (Cont.)

6 Q. Miss Varano, during that first contact you had
7 with Dr. Bonds, he discussed with you the fact your
8 son was uncooperative, that he may need or was going
9 to possibly utilize the papoose to immobilize him so
10 he can examine him, and he went over the consent forms
11 with you at that time; is that correct?

12 A. Yes.

13 Q. And you felt that he gave you an adequate
14 amount of time to answer questions or interact with
15 him regarding that specific issue and the forms that
16 he was presenting to you at that time, correct?

17 A. And I asked him about the risks and he said
18 there was no known risks.

19 MR. NOWATNY: Objection. Move to strike
20 as nonresponsive.

21 THE COURT: Uhm --

22 MR. HIGGINS: I think it was general
23 enough that it was within the scope of the
24 question.

25 THE COURT: Uhm, I'm going to sustain the

1 objection. She's testified to it already. It's
2 in the record. But sustained. It was
3 nonresponsive.

4 Q. I'm asking about you're sitting in the room,
5 you had plenty of time to take your son out of Small
6 Smiles at any point in time before any treatment was
7 given, correct?

8 A. Yes.

9 Q. All right. And Dr. Bonds comes back there,
10 he's got forms, he's asking you to look at forms,
11 consider forms, forms like if you have any questions
12 about these techniques ask questions, he spent an
13 adequate enough time with you to interact with you on
14 those forms and discuss those issues during that first
15 visit; is that correct?

16 A. Yes.

17 Q. Thank you. Now, at this point in time, you now
18 have a strange person you never met before, you never
19 met Dr. Bonds before that, correct?

20 A. Correct.

21 Q. Was he unfriendly and rude during that
22 conversation?

23 A. No. He wasn't rude.

24 Q. All right. So the rude person was that
25 receptionist?

1 A. The receptionist -- yes.

2 Q. Now, when you had that conversation that here's
3 this new dentist, these new folks that are suggesting
4 they're going to restrain my child, and you're already
5 feeling nervous and you have -- your stomach hurts and
6 you already talked to your husband about maybe going
7 back and getting your son out of the back room, right?

8 A. Yes.

9 Q. And at that time your son, he's not swollen any
10 more, you didn't see any swelling, right?

11 A. Right.

12 Q. No complaints of pain, that was all resolved
13 with those antibiotics, right?

14 A. Right.

15 Q. In fact, he looked just fine to you at the time
16 you took him in for that visit at Small Smiles, right?

17 A. Right.

18 Q. But you signed these forms and you allowed Dr.
19 Bonds to go back and continue the exam and provide
20 treatment that day, correct?

21 A. Yes.

22 Q. Let's go to Exhibit 27. See on this, this is
23 the operative procedures and it's dated May 23, 2006,
24 there's an area where it marks behavior, definitely
25 negative, unable or refusing to cooperate, overt,

1 lacks maturity. That was the picture that Dr. Bonds
2 shared with you about your son's conduct on that date,
3 right?

4 A. Right.

5 Q. Go to Exhibit 29.

6 MR. NOWATNY: Can you blow it up some?

7 Q. This is the consent for protective
8 immobilization. It's got your signature and the date
9 of May 23rd, 2006, right?

10 A. Right.

11 Q. And you have some initials on there indicating
12 that you read those individual items and initialed
13 them, right?

14 A. Right.

15 Q. You understood based on items one and two, one
16 was he requires immediate diagnosis. Now, at this
17 time you knew Dr. Bonds hadn't been able to look in
18 your son's mouth or do anything because he was already
19 uncooperative, right?

20 A. Right.

21 Q. All right. And limited treatment, cannot
22 cooperate due to his lack of maturity. That was one
23 of the concerns you knew was at issue already because
24 Dr. Bonds came out and talked to you about it, right?

25 A. Right.

1 Q. The other is either my child or dentist and
2 staff would be at risk without the protective use of
3 immobilization?

4 THE COURT: I'm going to ask you to --
5 between the Texas accent and the talking a little
6 bit -- not too fast.

7 MR. NOWATNY: Too fast.

8 THE COURT: Slow down a little bit.

9 Q. Under the second, the third item where it says
10 for the safety of my son, and the safety, you
11 understood that was another consideration, right?

12 A. I did.

13 Q. All right. Now, you also I understood, reduces
14 or eliminates the movement issue that you had observed
15 your son engage in at Dr. Patel's office raising his
16 hand up, right?

17 A. Right.

18 Q. And protect the son -- and your son and the
19 dental staff from any injuries if they start using
20 needles and handpieces and it doesn't go where it's
21 suppose to, somebody might get hurt, including your
22 son?

23 A. Yes.

24 Q. And you understand that?

25 A. Yes.

1 Q. You were in this courtroom and you were in here
2 when Dr. Slack testified, right?

3 A. Yes.

4 Q. Dr. Slack said, you know, the risk of doing,
5 using a papoose is it might have some bruising and you
6 might emotionally excite the child and result in some
7 kind of emotional trauma. You heard that?

8 MR. HIGGINS: Objection to the form of
9 that question as to emotionally excite the child.
10 I think that's not the testimony.

11 THE COURT: It is cross-examination. So
12 I'll overrule the objection. You can answer the
13 question.

14 A. Can you repeat it?

15 Q. All right. As far as the physical side of
16 using this papoose, you were in here when Dr. Slack
17 said, well, the only physical harm she could come up
18 with or testify to was there might be some bruising or
19 marks on the skin, right?

20 A. That she testified to, yes.

21 Q. Okay. What we're talking about here, where
22 it -- I understand there are no risks to the
23 immobilization procedure. You were asked about that
24 when Mr. Higgins was talking to you, right?

25 A. Right.

1 Q. Now you understood, did you not, that if the
2 dentist or the dental staff physically restrained your
3 son's extremities so they can care for him there might
4 be a risk of bruising or marks on his body from that?

5 A. Yes.

6 Q. And you consented to that and you understood
7 that?

8 A. Yes.

9 Q. Now, with respect to the papoosing, there are
10 these photos showing the item open, the item laid out?

11 A. I can't tell what any of those pictures are and
12 even when I signed them. That's where the distortion
13 comes in.

14 MR. NOWATNY: I'd like to refer to Exhibit
15 200; again, this is the original chart. Can you
16 convert me over.

17 Q. Start you off, this is the same form we
18 are looking at, this is the original of it when you
19 signed it on May 23rd, 2006, right?

20 A. Right.

21 Q. All right. Okay. So -- and you're holding
22 this item right there as close as you need it to look
23 at it when you had it, right?

24 A. First of all, it was not magnified like this.
25 And if you look at it without it like that, could you

1 tell what that is?

2 THE COURT: Okay. He's allowed to ask the
3 questions.

4 THE WITNESS: I'm just saying, but --

5 THE COURT: So I can't remember what the
6 question was.

7 A. It's distorted, yes. I seen and signed it
8 though, yes.

9 Q. So didn't understand that's a child standing
10 next to the device?

11 A. No.

12 Q. You didn't understand that?

13 A. No.

14 Q. How about this? Did you -- one in the middle,
15 did you understand that that's the --

16 A. I can't even tell what that is.

17 Q. Don't know what it is. How about this one?
18 Let's get in here. Wow, don't want to do that. Let's
19 get in a little tighter. So see the face on the
20 child? See the dental person next to him? Don't see
21 any arms or anything?

22 A. No.

23 Q. Uhm, you saying you didn't understand that's
24 what the device looked like --

25 A. No --

1 Q. -- that your child was in?

2 A. -- and I still haven't seen what they used for
3 a papoose.

4 Q. Now --

5 MR. NOWATNY: Go ahead and change that
6 over.

7 Q. Now, when Dr. Bonds is mentioning to you that
8 your son's not cooperating, you indicated on history
9 form you may have two teeth with abscess, he wants to
10 take a look at them, that was a reasonable request by
11 him to work with you to try to get some kind of access
12 to your son's mouth, right?

13 A. Yes.

14 Q. And at the time you understood your son may
15 have an infection issue because you heard so from a
16 Dr. Taylor and a Dr. Patel, right?

17 A. Right.

18 Q. But you were concerned about his overall
19 well-being enough to see three different healthcare
20 providers in the course of two weeks, right?

21 A. Right.

22 Q. So is it your testimony that if somebody said
23 you know what, your son, if we put him in this device
24 might get possibly some bruises or some skid marks and
25 he's not going to like it, may cry, that given the

1 condition you took your son on May 23rd to Small
2 Smiles, you would have taken your son out of there
3 with no treatment; is that right?

4 A. Yes. I would have took him somewhere else if I
5 had to if I knew the risks at the time.

6 Q. Okay. Now, while your son was going to Small
7 Smiles, this whole time, two years, you had some
8 insurance book with providers in it, right?

9 A. Yes.

10 Q. And you went in that book and you called all
11 the dentists you could find, didn't you?

12 A. Yes.

13 Q. And you were told none of them were going to
14 take Jeremy, right?

15 A. Right.

16 Q. So you would have left Small Smiles on May
17 23rd, 2006, knowing that your long-time pediatrician
18 and a family dentist, Dr. Patel, had both mentioned to
19 you he has two abscessed teeth and/or one abscess
20 teeth that needs to be treated, right?

21 MR. HIGGINS: Objection. Asked and
22 answered.

23 THE COURT: Sustained.

24 Q. Now, after this appointment on May 23rd, 2006,
25 you saw Jeremy, right?

1 A. Yes.

2 Q. Isn't it true you did not see any marks on his
3 skin or signs of bruising anywhere on his body on May
4 23, 2006?

5 A. No, I did not.

6 Q. And isn't it true that's the first day, to your
7 knowledge, anybody ever stuck a needle in his mouth,
8 right?

9 A. Right.

10 Q. Also true that's the first day, to your
11 knowledge, anybody ever pulled a tooth out of his
12 mouth, right?

13 A. Right.

14 Q. And when he came out he was pretty upset about
15 that, right?

16 A. Right.

17 Q. I think you said he was hysterical for about
18 twenty minutes in the car ride back, right?

19 A. Yes.

20 Q. And all he can tell you about what happened to
21 him when he was in that back room is that they put
22 something in his mouth?

23 A. Right.

24 Q. Didn't tell you he got a shot in the mouth?

25 A. No.

1 Q. Didn't tell they reached in with stuff and
2 pulled things out of his mouth?

3 A. No.

4 Q. Didn't say anything about being wrapped up in a
5 papoose?

6 A. He said that he was wrapped up in a mummy
7 thing.

8 Q. So you knew then when you were taking him home
9 he was wrapped up in a mummy thing and that is
10 something that he shared with you?

11 A. Yes.

12 Q. So you have this experience at Small Smiles
13 where the receptionist was rude, folks aren't
14 friendly, your stomach hurt for a period of time, you
15 have a child coming out all puffy and upset,
16 hysterical, tells you he had been put in a mummy
17 thing, and you come back nine more times to Small
18 Smiles, right?

19 A. I had no choice.

20 Q. Now, Dr. Bonds came back out and visited with
21 you a second time on May 23rd, 2006, after he had done
22 his examination, right?

23 A. Right.

24 Q. So he sits down with you beforehand, says I
25 been back here ten minutes with your son, he's not

1 letting me look in his mouth, I'm going to have to do
2 something, use the protective immobilization so I can
3 get a chance to look in his mouth, and you understood
4 that's what took place, right?

5 A. Yes.

6 Q. He's now looked in the mouth and he comes back
7 to talk to you again before he's done any treatment,
8 no shots in the mouth, no teeth pulled, right?

9 A. I guess.

10 Q. Now, at that time --

11 MR. NOWATNY: Can you put up 23? Blow it
12 up a little bit.

13 Q. He's coming out and he has this big list of
14 problems that he shared with you, right?

15 A. Yes.

16 Q. And, at this time, he presents you with this
17 form identifying all the teeth, eleven teeth, right?

18 A. Right.

19 Q. And you signed this form and initial it where
20 it is indicated, right?

21 A. Right.

22 Q. All right. Now, when he came out and talked to
23 you the second time, he went over each of those teeth
24 with you, right?

25 A. I believe so, yes.

1 Q. At the time that he came out, he went over not
2 just here's the tooth that is called B, and located in
3 your son's mouth, he says here is a tooth and these
4 require fillings, these require certain care issues,
5 right?

6 A. I don't remember that.

7 Q. Well, if he's going to talk about you have
8 eleven teeth with problems, didn't you ask him, well,
9 what's wrong with tooth number J?

10 A. I said what's wrong with all of them? Is it
11 from the gummy bears? He's got twenty teeth in his
12 whole mouth. I don't understand how eleven of them
13 have problems. He was three. They're all baby teeth.
14 I did say that to him. I don't understand why he
15 needs to have caps and crowns and fillings on baby
16 teeth.

17 Q. So there's no question that before an injection
18 had been done in your son's mouth, teeth pulled, you
19 understood crowns and fillings were part of the
20 treatment suggested for eleven teeth, right?

21 A. Yes.

22 Q. Gummy bears came up in the conversation, you
23 actually offered that to Dr. Bonds as is that what
24 happened here, is that the problem?

25 A. Yes.

1 Q. Because your son is eating gummy bears three or
2 four times a week?

3 A. Yes.

4 Q. Box of them at a time?

5 A. They're little bags.

6 Q. Okay. Now, isn't it true that when Dr. Bonds
7 comes out and talks to you the second time before he's
8 done any treatment of your son, he spent at least ten
9 minutes with you talking about these things?

10 A. Yes.

11 Q. And isn't it true you felt that was an adequate
12 amount of time to discuss all these issues with Dr.
13 Bonds?

14 A. Yes.

15 Q. Now, here we go again, you had this experience
16 were you'd been in this facility, you had unfriendly
17 folks dealing with you, your stomach didn't feel right
18 because they'd taken your son in a room and you
19 weren't there, now, you have Dr. Bonds coming out and
20 saying you know what, the two teeth you thought you
21 had a problem with, I've got nine more concerns here.
22 All that happened before anybody pulled any tooth to
23 your knowledge, right?

24 A. Right.

25 Q. Why didn't you take your son out of there?

1 A. One, because I was under the impression that
2 they were pediatric dentists at Small Smiles. And,
3 two, I didn't -- no one else took Medicaid and I knew
4 with an abscess tooth, I'm not a dentist, but I knew
5 if you don't get an abscess tooth treated, it can go
6 to your brain. So I was worried about that.

7 Q. Okay. So you knew --

8 A. I did know that.

9 Q. -- as a layperson that that abscess infection
10 problem is a dangerous condition if it's not treated?

11 A. Yes, I did know that.

12 Q. And you knew those teeth needed to be pulled if
13 they had potential abscess?

14 A. I didn't know they had to be pulled. I just
15 knew if they're not treated that it could go to your
16 brain.

17 Q. Now, he didn't have any abscess on his teeth on
18 visits two through ten that you knew of?

19 A. No.

20 Q. And after you had this conversation with Dr.
21 Bonds, the second one, your son then did get the
22 treatment which resulted in him having injection in
23 his mouth and two teeth pulled, as far as you know,
24 correct?

25 A. I don't know if they gave him the injection at

1 that visit, but he did have extractions.

2 Q. And after that, having those two teeth pulled,
3 he was pretty upset and pretty puffy and had a tough
4 time in the car ride back, at least for twenty
5 minutes, right?

6 A. Yes.

7 Q. All right. Now, you were concerned about him
8 because of the condition you saw him in, he was that
9 upset and there was some bleeding and there was
10 puffiness, right?

11 A. At the time I didn't think anything. I trusted
12 them. I trusted that they were a pediatric dentist,
13 they knew what they were doing. I'm not. I'm just
14 the parent. But I did put my trust into them that
15 they were doing the right thing.

16 Q. Okay. So we have you in the car, have your
17 child very upset. You're leaving with an appointment
18 to return for additional work because you knew the
19 treatment plan, right?

20 A. Right.

21 Q. And you had concerns why would a child need
22 fillings and crowns on baby teeth, that was a concern?

23 A. Right.

24 Q. It wasn't a very pleasant experience for you
25 that first time at Small Smiles, was it?

1 A. No.

2 Q. Certainly wasn't for Jeremy?

3 A. No.

4 Q. So you're driving back to the house, and how
5 far are you from -- how far is Rome from Syracuse
6 again?

7 A. About an hour.

8 Q. You had an hour, and Chuck's with you, right?

9 A. Yes.

10 Q. So you all had an hour to talk about here's
11 what happened today and there was a lot of stuff they
12 say they need to do and they want us to come back, and
13 they did say come back next week, they gave you an
14 appointment to come back a few months later, right?

15 A. Right.

16 Q. All right. Now, during this time frame, did
17 your two daughters continue to receive their routine
18 dental care with Dr. Patel?

19 A. Yes.

20 Q. How long did you know Dr. Patel before you took
21 your son May -- excuse me, May 19th, 2006?

22 A. Not long.

23 Q. Hadn't been to a dentist with your daughters
24 long?

25 A. I did. They went to Gordon Ruff and Dr. Ruff

1 didn't take Medicaid, they were not on Medicaid
2 always. They were on Medicaid at that time that he
3 went to Small Smiles.

4 Q. Dr. Ruff's a general dentist, right?

5 A. Dr. Ruff is a pediatric dentist.

6 Q. So, all right. So you knew Dr. Ruff's a
7 pediatric dentist in your community that's seen some
8 of your children?

9 A. Yes. But he didn't take Medicaid.

10 Q. All right. And then you had Dr. Patel for --
11 you have an estimate of how much time you'd been
12 taking your daughters there before you took Jeremy?

13 A. Maybe a year or two. Not long.

14 Q. His staff pretty nice?

15 A. There's one lady. And him. Very small.

16 Q. She nice?

17 A. Very nice.

18 Q. All right. Now, so you leave Small Smiles, you
19 got your hysterical child, you had this stomach
20 problem while waiting to see what's happening to him.
21 You didn't have a good experience. You know that
22 they're suggesting fillings and crowns because of what
23 they're telling you they observed. Did you call Dr.
24 Patel and ask him about his recommendation of Small
25 Smiles after that visit?

1 A. No.

2 Q. Did you ever contact Dr. Patel at any point in
3 time from the first visit on May 23rd, 2006, until the
4 last visit on March 7th, 2008?

5 MR. HIGGINS: Objection. Relevance.

6 THE COURT: Overruled.

7 A. No.

8 Q. Did you ever express concerns or complaints to
9 Dr. Taylor about the care your son received at Small
10 Smiles at any point in time from the first visit on
11 May 23, 2006, through the last visit on March 7, 2008?

12 A. No. I thought that was what they do.

13 Q. Okay. So now -- and you took Jeremy to see Dr.
14 Taylor at least a half a dozen times over that two
15 years, right?

16 A. Yes.

17 Q. He had mono at one point and he had to go see
18 her several times --

19 MR. HIGGINS: Objection, Judge.

20 THE COURT: Sustained. Would counsellors
21 approach, please?

22 (A discussion off the record at the Bench, all
23 counsel present.)

24 THE COURT: Going to take our lunch break.

25 12:25. Come back in an hour. Have a nice lunch.

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Remember my admonitions.

(Luncheon recess.)

1 (Afternoon Session - October 2, 2013.)

2 THE COURT: Afternoon. Ready to proceed?

3 MR. LEYENDECKER: Your Honor, on this
4 afternoon's schedule we intend to play the tape of
5 Mr. Smith after Miss Varano finishes, then bring
6 Jeremy over. Then perhaps a tape after that,
7 depending what time, and start a Dr. Aman.

8 THE COURT: Thank you. Mr. Leyendecker,
9 did you say Lindley is the first one you're
10 reading?

11 MR. LEYENDECKER: No, Your Honor. Mr.
12 Smith, then Lindley later this afternoon.

13 THE COURT: Okay. Have a good lunch?
14 Nice outside I heard.

15 TRIAL JUROR: The bees are out in full
16 effect.

17 THE COURT: Okay. Are we ready to
18 proceed?

19 MR. NOWATNY: Yes, Your Honor. Thank you.

20 BY MR. NOWATNY: (Cont.)

21 Q. Afternoon, Miss Varano.

22 A. Good afternoon.

23 Q. Couple more documents that you were asked to
24 sign related to Small Smiles on May 23rd. Draw your
25 attention to Exhibit 30. Local anesthesia consent

1 form. Before you took Jeremy to Small Smiles, your
2 other children had had some dental work done; is that
3 right?

4 A. Yes.

5 Q. And had some anesthesia put in locally?

6 A. Yes.

7 Q. All right. Uhm, and this form --

8 MR. NOWATNY: I'm sorry, go back to the
9 bottom of it.

10 Q. That's your signature next to the May 23rd
11 date?

12 A. Yes.

13 Q. Okay.

14 MR. NOWATNY: Prop back to the top. Top,
15 I'm sorry.

16 Q. So part of this you understood there is
17 potentials for numbness and possibly biting and
18 chewing, and also there is -- small needle can break
19 off, those kinds of risks associated with having those
20 injections, right?

21 A. Yes.

22 MR. NOWATNY: Scroll down to the next
23 half.

24 Q. You also were given some information about the
25 potential use of nitrous oxide as one of the

1 considerations that might be used by Small Smiles,
2 right?

3 A. Yes.

4 Q. Now, at the bottom of this informed consent --
5 excuse me, consent, it says, please ask the dentist if
6 you have any questions regarding this consent form.
7 Do not initial anything if you have any questions.
8 Once again, you were invited to talk to Dr. Bonds if
9 you had any questions about these items as well,
10 right?

11 A. Yes.

12 MR. NOWATNY: Can you go now to Exhibit

13 31.

14 Q. This is a surgical consent form that you signed
15 on May 23rd, 2006, that's your signature; right?

16 A. Yes.

17 Q. Again, we have all of your initials, correct?

18 A. Yes.

19 Q. All right. And, again, this one advises you
20 that oral surgery is not an exact science. Gives you
21 no guarantees. You understood that at the time you
22 signed this as well, right?

23 A. Yes.

24 Q. Also, you're asked, I hereby certify I fully
25 understand this authorization and the reasons why this

1 surgery needs to be done, and you've been given an
2 opportunity to ask questions, and they have been
3 answered to your satisfaction. Right?

4 A. Yes.

5 Q. Now, following this first appointment at Small
6 Smiles, you are driving home, your son is very upset,
7 and you said he was crying for at least twenty minutes
8 on that hour-long drive; right?

9 A. Yes.

10 Q. After he stopped the crying did his behavior
11 appear to you to go back to its baseline?

12 A. Yes.

13 Q. And if you had any concern that he had any
14 traumatic consequence of this visit so severe that it
15 bothered you, you would have certainly taken him in to
16 see Dr. Taylor; right?

17 A. Yes.

18 Q. And, in fact, throughout the two years that
19 your son was receiving care at Small Smiles, you never
20 expressed any concerns to Dr. Taylor about the care he
21 got at Small Smiles; correct?

22 MR. HIGGINS: Objection. Asked and
23 answered.

24 THE COURT: Overruled.

25 A. No.

1 Q. Maybe I need to re-ask the question. Did you
2 express any concerns to Dr. Taylor about any of the
3 care Jeremy received at Small Smiles?

4 A. No.

5 Q. Now, after the very first visit at Small
6 Smiles, Jeremy's dental hygiene improved, got better?

7 A. Uhm, the abscess was gone.

8 Q. Brushing his teeth more?

9 A. Yes.

10 Q. Stopped eating gummy bears?

11 A. He was scared to death to eat gummy bears.

12 Q. Dr. Bonds did have a moment to share with you
13 about maybe some dental hygiene instruction, right?

14 A. He told me to -- if he eats gummy bears to use
15 gauze to wipe over his teeth.

16 Q. So also gave you further instruction on
17 something to do with his teeth in addition to
18 brushing?

19 A. Yes.

20 Q. According to the records from Small Smiles, you
21 and Jeremy returned to Small Smiles on August 31st,
22 2006. Do you have any specific recollection of that
23 visit?

24 A. I don't.

25 Q. In fact, if I recall from your deposition, you

1 don't have any specific memory of any of the other
2 nine other visits; is that right?

3 A. There's only the one where I went back when he
4 had the nitrous.

5 Q. Okay. So how about this, of the nine remaining
6 visits, there's one that you have a distinct
7 recollection of relating to the nitrous?

8 A. Yes.

9 Q. Now, I think on direct you were asked after
10 that first visit at Small Smiles it was time to go for
11 the follow-up visit, and you had to lie to Jeremy to
12 get him to go at all?

13 A. Yes.

14 Q. What do you mean when you said you had to lie
15 to him, did you have to tell him you were going
16 someplace else?

17 A. We didn't tell him that we were going there.
18 We just didn't tell him until we got there. Once we
19 got there, he seen that it was Small Smiles, he
20 thrashed himself in the car, but we told him that we
21 were going to buy him a toy or take him to Chuck E
22 Cheese and he'd be okay. He needed to get the work
23 done to get his teeth better.

24 Q. So that was kind of the approach you had at
25 least on the second visit? I think you did that a few

1 other times?

2 A. Yes.

3 Q. So if we go just to the second visit, you had a
4 scheduled appointment so you knew you were going to be
5 driving down to Syracuse to go to Small Smiles, right?

6 A. Yes.

7 Q. And you have the hour-long drive? It's always
8 an hour long, right?

9 A. Right.

10 Q. Okay. And you don't prepare Jeremy to come to
11 my client's facility on the second visit or some of
12 the others so that he could be ready and not be all
13 upset in the parking lot before he came in; is that
14 right?

15 A. The second time we did tell him that we were
16 going, but after that we didn't because it was such a
17 hard thing to get him to go.

18 Q. Okay. So you believe you told him at the
19 second visit that he was going to Small Smiles, but
20 then the third visit you wouldn't have told him;
21 right?

22 A. We would just go until we got there.

23 Q. So on the third visit, you get him in the car,
24 he doesn't know where he is going. Drives an hour
25 down to Syracuse, you pull in the Small Smiles's

1 parking lot and that's the first moment that Jeremy on
2 the third visit to Dr. Bonds that he's aware he's
3 going into the Small Smiles clinic; is that right?

4 A. Yes.

5 Q. Didn't do anything to get him ready so when he
6 walked in Dr. Bonds wouldn't get the extra upset
7 Jeremy because he didn't know where he was going that
8 day, didn't do that?

9 A. No.

10 MR. NOWATNY: Craig, could you go to
11 Exhibit 35, 35. Prop it to the top. Go to the
12 top.

13 Q. So this is the second visit at Small Smiles and
14 his behavior is negative, refusing to cooperate, once
15 you got him there he was upset again, right, about
16 being at Small Smiles?

17 A. Yes.

18 MR. NOWATNY: Go to Exhibit 38.

19 Q. So now on October 10th, this is now the third
20 visit, excuse me.

21 MR. NOWATNY: Excuse me, 36.

22 Q. So here again you're being advised because of
23 the behavior that we just talked about that he may
24 require protective immobilization again, and you
25 signed a consent form on August 31st, 2006; right?

1 A. Yes.

2 Q. Same form that has the photos at the bottom and
3 indicates that you understand all measures and what
4 have you and you signed, right?

5 A. Yes.

6 MR. NOWATNY: Go to Exhibit 37.

7 Q. So October -- this is now October 11th, yeah,
8 2006, third visit with Dr. Bonds. This is where you
9 didn't tell Jeremy where he was going and you showed
10 up at Small Smiles and wasn't --

11 A. I don't remember exactly which visit. It was
12 right around there. Second, third, fourth, I don't
13 know. Eventually I had to stop telling him that we
14 were going, but I'm not exactly sure what visit it
15 was.

16 Q. During the time you were taking Jeremy to Small
17 Smiles, there was a period of time when you lied to
18 him about where you were taking him, right?

19 A. I just wouldn't tell him where I was taking
20 him.

21 Q. You were bringing him into Small Smiles without
22 any preparation and it's not the first one, he didn't
23 know anything about Small Smiles, but it could be any
24 one of these others; is that right?

25 A. Yes.

1 Q. And he -- when you pulled in the parking lot,
2 you knew -- he knew where he was -- started getting
3 upset?

4 A. Yes.

5 Q. Every time, right?

6 A. Yes.

7 Q. Here again on this date it's again noted on
8 October 11, 2006, that he's uncooperative, definitely
9 negative, that he's still not even four years old or
10 is he around four now or still three and a half?

11 A. He was four.

12 MR. NOWATNY: Can you go to Exhibit 38.

13 Q. Here we have yet another one of these consents,
14 consent for protective immobilization mentioning that
15 protection of your son and staff may need to use this
16 device that is demonstrated. You again signed it that
17 day, right?

18 A. Yes.

19 Q. Uhm, this is the third visit with Dr. Bonds?

20 A. Yes.

21 Q. After that visit, did you see any bruises or
22 marks on your son's body?

23 A. No.

24 Q. The most hysterical that your son ever was
25 following a visit at Small Smiles was the first one

1 when he had those teeth extracted, right?

2 A. Yes.

3 Q. Did he cry after the visit with Dr. Bonds on
4 October 11th?

5 A. I'm not sure which ones. He cried hysterically
6 at some, and there are some where he came out not
7 crying.

8 Q. So of the ten visits there, about half of them
9 you recall he cried and half of them he didn't?

10 A. Yes.

11 Q. Are you aware of any one of these visits that
12 your son went to Small Smiles that he didn't get some
13 dental treatment done?

14 A. No.

15 Q. And, in fact, you've been sitting in this
16 courtroom, you're aware there is at least four, five
17 of these visits where your son didn't get any local
18 anesthetic for getting some fillings, right?

19 A. Right.

20 Q. Somewhere, you don't know which one, about five
21 of these visits there was no crying from your son?

22 A. Yes.

23 Q. And the worst crying that he had was twenty
24 minutes after the first visit as far as you recall?

25 A. Yes.

1 Q. Behavior always returns back to normal after he
2 got through the crying fit, right?

3 A. Yes.

4 Q. Now, there was a visit that you demanded to go
5 in the back, right?

6 A. Yes.

7 Q. And as we sit here today there is only one
8 visit you recall where you actually demanded, "I'm
9 going back there, I want to see what is going on;"
10 right?

11 A. I asked every time and they said no, but that
12 time was the time that they said that they were using
13 nitrous, and I've never heard -- to me I've never
14 heard of them using nitrous on a child.

15 Q. You demanded to go back there, right?

16 A. I told them I want to be back there with him.

17 Q. And the Small Smiles folks let you back there,
18 didn't they?

19 A. The lady did.

20 Q. Now --

21 MR. NOWATNY: Can you convert this over.

22 Q. After the August visit -- or at the August
23 visit, you were aware that they were going to put some
24 crowns on the front teeth, right?

25 A. Yes.

1 Q. Now, we have --

2 MR. NOWATNY: Is it up?

3 Q. You brought some photos of your son, Jeremy.
4 Got this one here. We talked about. See if I can
5 bring that in a little better. As I understand it, he
6 is around two at this time, right?

7 A. Right.

8 Q. Next photo I believe you provided in this
9 lawsuit is this one right here where he is around
10 five?

11 A. Right.

12 Q. Didn't bring any photos when he was around
13 three?

14 A. That -- those are the only ones that I had.

15 Q. And this is when he's five after he's received
16 his crowns across those four front teeth, right?

17 A. Yes.

18 Q. Never complained to you about those crowns, did
19 he?

20 A. No.

21 Q. And you acknowledge they look pretty good,
22 right?

23 A. Yes.

24 MR. NOWATNY: Exhibit 37. I need you to
25 come back.

1 Q. Did you take any pictures of Jeremy when he was
2 three years old?

3 A. Yes, I did. But not in an eight-by-ten I
4 didn't.

5 MR. NOWATNY: Can you pull up 40. Number
6 40.

7 Q. Here we are in February 22, 2007, you filled
8 out another patient information form, indicating again
9 that you were allowed an opportunity to consider the
10 dentistry patient management techniques on page two of
11 this form, right?

12 A. Yes.

13 Q. Now, was it your impression that as time went
14 by Jeremy's behavior in dealing with going to Small
15 Smiles got a little better because he was getting a
16 little older?

17 A. I guess, yes.

18 Q. And certainly by the time he is getting to Dr.
19 Ballini's office he is even older, right?

20 A. Yes.

21 MR. NOWATNY: Go to page 64. Exhibit 64.

22 Q. That's page two of that form again indicating,
23 if necessary, they may have to physically restrain
24 your son in order to provide care, so a couple of
25 times you got to see this particular form, right?

1 A. I did, but I wasn't aware of the whole risks
2 again.

3 Q. Again, physical immobilization there, you
4 understand that concept you knew as well the first day
5 you went as this time, right?

6 A. I didn't realize his heart rate could go up. I
7 didn't realize that, a lot of things.

8 Q. Did you believe you would have taken -- let's
9 see -- my understanding is, tell me if I'm wrong, that
10 Jeremy went to Dr. Taylor at least six times during
11 this two-year time frame. Does that sound fair?

12 A. Yes.

13 Q. Did Dr. Taylor ever inform you that Jeremy
14 appeared to have any kind of problems with his blood
15 pressure or other kinds of issues that she had
16 concerns about?

17 A. No.

18 Q. Did Dr. -- ever talk to Dr. Taylor about, you
19 know, where one of your kids' heart rate might go if
20 they are throwing a fit?

21 A. I didn't even know his heart rate. I didn't
22 even know that until the lawsuit started.

23 Q. Okay. So you --

24 A. I had no clue his heart rate was at 204.

25 Q. Before this lawsuit, did you have some

1 appreciation that 204 was not normal --

2 A. Yes --

3 Q. -- for a child?

4 A. -- for a child.

5 Q. So you had a baseline, you knew once you're at
6 204 that's not good for a child?

7 A. Yes.

8 Q. Where did you get that information?

9 A. Just being a mother. It's usually around 150
10 normal. I worked at doctors' offices.

11 Q. Let's talk about that. So you have -- you just
12 by virtue, like almost six years you worked at two
13 different doctor's offices?

14 A. Yes.

15 Q. You got some sense of certain normal ranges for
16 blood pressures and --

17 A. No, not on children.

18 Q. Do these doctors, were they pediatricians?

19 A. No.

20 Q. So but somehow working with these two
21 doctors -- what kind of doctors were they?

22 A. The first doctor was OB/GYN and the second was
23 an ENT.

24 Q. And somewhere through working at those as a
25 receptionist in those two offices you found out what

1 the normal range for blood heart rate was for
2 children?

3 A. I don't know if it was there. But I knew that
4 204 is high. I didn't know that -- I didn't see his
5 records until after.

6 Q. And has anybody told you what they believed his
7 heart rate would have been when he was out in the car
8 pulling up on August 31st, 2006, finding out he was
9 going to go to Small Smiles again when he hadn't been
10 told about it, anybody told you what the normal heart
11 rate might be for him under that situation?

12 A. I wouldn't have put him in a papoose if I knew
13 it was that high.

14 Q. Anybody tell you that some strangers he never
15 met start physically holding him down that his heart
16 rate would be any different than if he was in a
17 papoose?

18 A. Uhm, no, nobody told me that.

19 Q. Now, after this visit on October 10th, 2006,
20 with Dr. Bonds, I guess I will go ahead and ask all
21 these, at any time that you picked up your son after
22 he had been in the back room getting treatment at
23 Small Smiles, did you ever see any bruises or marks on
24 his body?

25 A. No.

1 MR. NOWATNY: Take me to Exhibit 42.

2 Q. Uhm, here you're being advised, on top of the
3 eleven teeth when you first came, they are identifying
4 another one or two teeth that had problems, right?

5 A. Yes.

6 Q. Now, back on May 23rd, 2006, you had a concern
7 that Dr. Bonds talked to you about Jeremy having
8 eleven teeth, baby teeth with problems, right?

9 A. Yes.

10 Q. Well, now, we've got two more teeth being
11 talked about. Did you have a concern about that?

12 A. Yeah.

13 Q. Did you contact Dr. Patel about all this
14 treatment at this point in time?

15 A. No, because Dr. Patel told me he had to be seen
16 by a pediatric dentist so I didn't contact him, no.

17 Q. Did Dr. Patel at any time ever tell you that
18 the dental problems that your son had in 2006 were
19 dental problems he could not treat?

20 A. No.

21 Q. Again, here you're acknowledging that this
22 treatment plan, you signed it, you have initials on it
23 indicating somebody talked to you about it, right?

24 A. Yes.

25 MR. NOWATNY: Go to 47.

1 Q. Here you are signing on I believe that is
2 February 22, 2007. You again have been told there is
3 risk, break off of the needle, you can get permanent
4 numbness, have these injection related problems, you
5 knew that?

6 A. Yes.

7 MR. NOWATNY: Go to Exhibit 48. Blow it
8 up a little bit. Take it down to the bottom
9 signature box.

10 Q. That's not your signature?

11 A. No.

12 Q. Whose is that?

13 A. Jeremy's father.

14 Q. Chuck Bohn?

15 A. Yes.

16 Q. So here we have an opportunity for Jeremy's
17 father to go through the same process you had gone
18 through on some prior visits in terms of the
19 paperwork, right?

20 A. Yes.

21 Q. And so he is signing off again that he has had
22 the opportunity to see page two about dentistry
23 patient management techniques, that's his signature,
24 right?

25 A. Yes.

1 MR. NOWATNY: Go to Exhibit 65.

2 Q. Here's that list again. Did Chuck come out of
3 this appointment and talk to you and say, you know,
4 they had this list of holding my son with a dentist
5 and other folks, didn't much care for that, had a
6 concern, did he talk to you about that?

7 A. No.

8 MR. NOWATNY: Go to Exhibit 50.

9 Q. So now Chuck's there, this is November 12th,
10 2007, and they're talking about a couple more -- at
11 least one more -- a couple more teeth on here might
12 need some work. Did Chuck ever express concerns to
13 you about Jeremy needing so much work on these baby
14 teeth?

15 A. No. When I told him about anything of the
16 concerns I had, he told me this is what they have to
17 do.

18 Q. So to your knowledge, Chuck seemed to be okay
19 with this treatment regiment that the Small Smiles is
20 providing to Jeremy?

21 A. He trusted them, too.

22 Q. Okay. And here on this visit would he have
23 shared with you typically, hey, I went to Small
24 Smiles, here's what happened, did he share with you?

25 A. I'm sure. I don't remember if he did.

1 Q. Now, we know that we're into November 2007.
2 Getting close to -- past the midway point. You are
3 being told there is more teeth, more baby teeth need
4 treatment, and you continue to bring Jeremy to Small
5 Smiles, correct?

6 A. Yes.

7 Q. And the reason for that primarily was for two
8 years your son had been receiving the benefit of, as
9 Mr. Leyendecker enthusiastically puts it, taxpayer
10 money to pay for all his dental work, right?

11 A. Yes.

12 Q. Does Dr. Ballini take Medicaid?

13 A. Yes, he does. At the end of this, though, I
14 don't know if he was on Medicaid.

15 Q. That's not what my question is. I'm just
16 asking --

17 A. Yes, Dr. Ballini does take Medicaid and he was
18 new to the area.

19 Q. Dr. Ballini is a regular dentist, correct?

20 A. Yes.

21 Q. And the first time you go and see Dr. Ballini
22 is November -- excuse me. Yeah, November 2009, right?

23 A. Yes.

24 Q. To your knowledge, Dr. Patel continued to take
25 Medicaid patients throughout the time Jeremy was at

1 Small Smiles, correct?

2 A. I -- yeah, I don't think. Uhm, they weren't on
3 Medicaid towards the end of Small Smiles. They ended
4 up going on Child Health Plus which Ballini took both
5 and Patel. I don't -- they ended up going to Ballini.
6 I didn't go back to Patel. I don't know what he took
7 after that.

8 Q. So at some point in time your other children
9 were going to dentists and you didn't require
10 Medicaid, right?

11 A. Yes.

12 Q. So at some point while your son was still going
13 to Small Smiles, you had the identity of dentists you
14 could take your family to that were covered by
15 whatever insurance you had, right?

16 A. Uhm, no. Nope.

17 Q. Jeremy had a different deal?

18 A. Dr. Patel is who the girls went to 'til I found
19 Ballini, and then they all went to Ballini.

20 Q. Okay.

21 MR. NOWATNY: Go to 54, please.

22 Q. And this is also the father, Chuck, signing
23 that he was advised of those various risks we talked
24 about with the local anesthesia?

25 A. Yes.

1 Q. All right. Now, at any time that Jeremy was
2 going to Small Smiles, did you ever ask him what the
3 dentists were saying to him when he was in that room
4 by himself with them?

5 A. I don't remember anything.

6 Q. So you don't know if Dr. Bonds, Dr. Aman, Dr.
7 Khan went through show-tell-do, distraction, all
8 manner of these other items that are listed on that
9 protective immobilization when they were dealing with
10 Jeremy on any one of these visits; is that correct?

11 A. I didn't go back there. I don't know nothing.

12 Q. You didn't ask your son if he could tell you
13 something, right?

14 A. I don't remember asking him. Maybe I did. I
15 don't know.

16 Q. Now, there was a time when you were taking your
17 son to Small Smiles -- well, throughout the time you
18 took him there, it was a hardship to you, right?

19 A. Yes.

20 Q. That's quite a drive I understand and you had
21 to have Chuck do the driving to take you down there,
22 right?

23 A. Yes.

24 Q. And it's true, is it not, that during the time
25 that your son was going to Small Smiles, you actually

1 went to the Small Smiles folks and said, I would like
2 you to do more procedures on one of the visits, right?

3 A. Fillings, yes.

4 Q. You actually asked the dentists of Small Smiles
5 to increase their per patient production with Jeremy,
6 right?

7 A. The first two, three visits they did three
8 fillings, two fillings. So then they stopped and said
9 that only one at a time. And I asked them, yes, can
10 you do two at a time instead of coming back every
11 week.

12 Q. You asked the dentist at Small Smiles to do
13 more procedures, to do what would have increased their
14 production per patient opportunity and they declined,
15 right?

16 MR. HIGGINS: Objection to form. Judge.

17 A. Yes.

18 THE COURT: Overruled.

19 A. Why did they decline?

20 Q. Now, with respect to Dr. Ballini, he's located
21 in Rome, right?

22 A. Yes.

23 Q. And he accepts Medicaid and your whole family
24 is going to him now, right?

25 A. Yes.

1 Q. Isn't it true that once you started and you've
2 been taking Jeremy there, right?

3 A. Yes.

4 Q. Isn't it true that at no time seeing Dr.
5 Ballini has he ever told you that it was his belief
6 that any of the care provided by the Small Smiles
7 folks was inappropriate or not needed?

8 A. Yes.

9 Q. Jeremy, he's about five and a half when he
10 started going to Dr. Ballini? Let's see? No, almost
11 seven, right?

12 A. Yes.

13 Q. And he doesn't have any trouble going to the
14 dentist now?

15 A. Nope.

16 Q. You mentioned in response to some question by
17 Mr. Higgins there was at least one visit or one point
18 in time that Jeremy was complaining he had a wrist
19 that hurt, right?

20 A. Yes.

21 Q. You looked at it, you didn't see any harm,
22 right?

23 A. No.

24 Q. And you don't know what visit that particular
25 complaint of wrist pain happened, right?

1 A. I don't remember.

2 Q. So you have no idea if he was placed in any
3 protective immobilization on any day that he
4 complained he might have some discomfort in his wrist,
5 correct?

6 A. I do not.

7 Q. As we sit here today, you do not know if any of
8 the crying on any of those five plus, minus visits was
9 because of being restrained with an immobilization
10 device or from just the dental care itself, right?

11 A. Right.

12 Q. Never at any time while he was going to Small
13 Smiles about the need to take him for any type of
14 counseling because of the care, right?

15 A. If I would have known what was going on, I
16 would have, but I didn't at that time so no.

17 Q. Well, you're watching your child every day,
18 you're the primary caregiver, right?

19 A. Yes.

20 Q. And you had no idea what was going on in the
21 back room, and you didn't ask your son to tell you
22 about what he was -- what the doctors or dentists were
23 telling him, right?

24 A. He wouldn't know when his heart rate is up or
25 any of that.

1 Q. Did you at any time take your son, Jeremy, to
2 go talk to any counsellor, mental health specialist
3 about anything associated with Small Smiles?

4 A. No.

5 Q. Now, he started kindergarten during the time he
6 was going to Small Smiles, right?

7 A. Yes.

8 Q. He's been doing pretty good in school?

9 A. Yes.

10 Q. He has pretty good grades?

11 A. Uh-huh.

12 Q. He's a healthy, happy kid, right?

13 A. Yes, he is.

14 Q. Have any out-of-pocket expenses associated with
15 any of the care your son's received from Small Smiles?

16 A. No.

17 MR. NOWATNY: Thank you, Your Honor. I
18 don't have anything further.

19 THE COURT: Thank you.
20
21
22
23
24
25

1 CROSS-EXAMINATION

2 BY MR. McPHILLIAMY:

3 Q. Afternoon, Miss Varano.

4 A. Good afternoon.

5 Q. We met before, haven't we?

6 A. Yes.

7 Q. I was present at your deposition last fall?

8 A. Yes.

9 Q. Couple of questions. You told us that when you
10 took Jeremy to Dr. Patel's office that Jeremy was
11 sitting in the chair and you were about six or eight
12 feet away, correct?

13 A. Yes.

14 Q. And you told us that Jeremy's back --
15 withdrawn. You told us that the back of the chair
16 faced you; is that a fair statement?

17 A. Yes.

18 Q. Okay. Did you tell Jeremy words to the effect,
19 "Jeremy, mommy's in the doorway, mommy's over here"?

20 A. He knew I was there. I didn't tell him.

21 Q. How did you know he knew you were there?

22 A. Because Dr. Patel was talking to me while he
23 was.

24 Q. Okay. Had Jeremy turned around at any point
25 and look around the chair to see you there?

1 A. No.

2 Q. Okay. When Jeremy was not opening his mouth,
3 waving his hand around to prevent Dr. Patel from
4 coming near him turning his head, things like that,
5 did you say words to the effect that Jeremy, hey,
6 Jeremy, let Dr. Patel, let the dentist look in your
7 mouth?

8 A. Yes.

9 Q. Did you say that to him?

10 A. Yes.

11 Q. And did he listen to you?

12 A. No.

13 Q. Did you say anything to Dr. Patel, words to the
14 effect, you know, Dr. Patel, Jeremy likes this
15 character or he likes this sport, talk to him about
16 that. Did you do anything --

17 A. No. I just assumed it was his first time ever
18 going, he was scared, and I'm sure Dr. Patel thought
19 the same thing that's why he sent me to a pediatric
20 dentist.

21 Q. So being in the back with Jeremy at Dr. Patel's
22 office with Jeremy knowing that you're -- you were
23 there had absolutely no effect on Jeremy's behavior;
24 would you agree with me on that?

25 A. I would.

1 Q. Okay. So you go to the first visit to Small
2 Smiles and you see Dr. Bonds?

3 MR. McPHILLIAMY: Craig, can I have 23,
4 please.

5 Q. And Dr. Bonds at some point comes out and shows
6 you a list, I believe you told us there were ten or
7 eleven different problems with Jeremy's teeth,
8 correct?

9 A. Yes.

10 Q. What I have on the board here is that list?

11 A. Yes.

12 Q. You say to yourself, how could Jeremy have all
13 these problems with all these different teeth? You
14 said that to yourself, right?

15 A. Yes.

16 Q. Jeremy was treated on that day and you left,
17 right?

18 A. Yes.

19 Q. You were given an appointment to return,
20 correct?

21 A. Yes.

22 Q. I believe that appointment was very early
23 September or late August?

24 A. Yes.

25 Q. So between the time that you left Small Smiles

1 on May 23rd, 2006, and were thinking about all these
2 things wrong with Jeremy's teeth, until the time you
3 returned the end of the summer -- withdrawn. That
4 summer did you and the family take any extended
5 vacations?

6 A. No.

7 Q. Any time that you were away from the house for
8 an extended period of time during the summer of 2006?

9 A. Not that I remember.

10 Q. So during the summer of 2006, did you take
11 Jeremy back to Dr. Patel's office to just have him
12 examine his mouth to confirm that this is all the
13 treatment that Jeremy needed, not that he was going to
14 treat him, examined his mouth, and just does he need
15 all this work, did you do that?

16 MR. HIGGINS: Objection. Prior motion.
17 Relevancy.

18 THE COURT: Overruled.

19 A. No.

20 Q. Okay. Now, you were aware that there was a
21 pediatric dentist -- withdrawn. Dr. Patel where was
22 his office located?

23 A. Patel?

24 Q. Yes.

25 A. In Sherrill, New York.

1 Q. I believe you told us earlier that your fiancé,
2 Chuck, actually drove you the night before to show you
3 where Dr. Patel's office was, correct?

4 A. Yes.

5 Q. And was Dr. Gordon Ruff's office located --

6 A. Rome.

7 Q. -- in your hometown?

8 A. Yes.

9 Q. And you knew how to get there?

10 A. Yes.

11 Q. And during that summer did you consider calling
12 Dr. Ruff who you told us was a pediatric dentist?

13 A. I did call Dr. Ruff.

14 Q. Did you call Dr. Ruff and ask him, Dr. Ruff, we
15 just went to a different dental office. I was shown a
16 list of all this work my son Jeremy needed. Can you
17 just examine his mouth and tell us if he needs the
18 work?

19 A. I did.

20 Q. And Dr. Ruff would not see you? Yes or no?

21 A. No.

22 Q. He would not see you?

23 A. No. He didn't take that insurance. I didn't
24 put it that way. I told him that he had stuff. Is
25 there any way that you can see him. That's how I put

1 it, and he said no.

2 Q. Did you tell him, I want you to see him just to
3 look at his mouth, not to treat him?

4 A. No, I didn't say that.

5 Q. Did you consider taking Jeremy to Dr. Ruff --
6 after you had the discussion with Dr. Ruff, did you
7 consider taking him to Dr. Ruff's office and just
8 paying out of your pocket to just have his mouth
9 examined since you told us he didn't take your
10 insurance, did you consider that?

11 A. If I would have known --

12 MR. HIGGINS: Objection. Relevance.

13 THE COURT: Sustained.

14 MR. McPHILLIAMY: I have nothing further.

15 THE COURT: Next? Mr. First.

16 MR. FIRST: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. FIRST:

20 Q. Good afternoon, Miss Varano.

21 A. Good afternoon.

22 Q. I'll be very brief. On May 23rd, 2006, you
23 signed a number of consents for procedures; isn't that
24 correct?

25 A. Yes.

1 Q. And I'm not going to go through it because
2 counsel has, but among other things with respect to
3 local anesthesia, there was a number of risks listed,
4 weren't there?

5 A. Yes.

6 Q. Including injury to nerves that could be
7 permanent on a rare occasion?

8 A. Yes.

9 Q. And local anesthesia could cause prolonged
10 numbness and things of that nature?

11 A. The local anesthesia is used all the time with
12 kids.

13 Q. Okay. So you felt some comfort level in that?

14 A. I did.

15 Q. But you were aware of the risks --

16 A. Yes.

17 Q. -- from that and you chose to go ahead --

18 A. Yes.

19 Q. -- with the treatment on May 23rd; isn't that
20 true?

21 A. Yes.

22 Q. And you were also told about the surgical risks
23 which were -- included possible fracture of the jaw,
24 involvement of other teeth, postoperative infection,
25 bone inflammation, all these things that you see on

1 these forms, you remember that?

2 A. Yes.

3 Q. And you looked that over and you signed it and
4 you wanted to go ahead despite those risks?

5 A. At the time it had to be weighed out, and like
6 I said, he did have an abscess is what I thought. And
7 I knew that it could go to -- I wanted him to get
8 the -- what he had to do.

9 Q. Okay. And with respect to the papoose, you had
10 a discussion with Dr. Bonds about that, correct?

11 A. Yes.

12 Q. And actually there has been testimony in this
13 courtroom from Dr. Mueller that there really are no
14 known risks from the papoosing procedure and that the
15 form says that. And you also heard testimony
16 yesterday the doctor said you can have a potential
17 mark or a bruise or potential psychological issue, did
18 you hear that?

19 A. Yes.

20 Q. And it's your testimony that if you had heard
21 that on May 23rd, that you would not have signed that
22 form, you would not have had Jeremy go ahead with the
23 treatment on that day; is that your testimony?

24 A. If I would have known that there was
25 fatalities, I probably wouldn't have.

1 Q. There's no testimony in this courtroom about
2 that?

3 A. Okay.

4 Q. You're assuming that, right?

5 A. Yeah.

6 MR. HIGGINS: Judge, I object. I believe
7 there has been testimony about that. It's in the
8 record.

9 Q. You also indicated that you had known there was
10 a possibility you could take Jeremy of -- to a
11 hospital. You may have done that?

12 A. Yes.

13 Q. I think that was in response to the attorney's
14 questions?

15 A. Yes. I don't know for sure because like I
16 said, at the time I really didn't think that. I just
17 thought that he needed the work, he was upset, like
18 any kid.

19 Q. Well, my question is this, if he went to the
20 hospital, he would have been under general anesthesia?

21 A. Yes.

22 Q. And you heard testimony in the courtroom about
23 that. There is a potential -- doesn't happen very
24 often, but there is a potential of serious injury or
25 death from that?

1 A. Yes.

2 Q. But that's the way you might have gone if you
3 had that opportunity, is that what you said?

4 A. I think they would have been able to monitor
5 his heart rate and go through the whole -- I would
6 think they would have monitored him better.

7 Q. You realize that was a potential -- those risks
8 were very serious and were potential risks for that?

9 A. Yes.

10 Q. And you would have gone ahead of it any way if
11 he needed it?

12 A. I think I would have, yes.

13 THE COURT: Mr. Higgins?

14

15 REDIRECT EXAMINATION

16 BY MR. HIGGINS:

17 Q. Kelly, good afternoon.

18 A. Good afternoon.

19 Q. You were asked a lot about what you would have
20 consented or what you wouldn't have consented to by my
21 esteem colleagues on the opposition. Uhm, would you
22 have consented to any treatment for Jeremy if you had
23 known that it was not necessary?

24 A. No.

25 Q. Why not?

1 A. If I knew that it wasn't necessary, then why do
2 it.

3 Q. Okay. And if you had known that the defendants
4 were putting -- if you had known that the defendants
5 were putting FORBA profit interests ahead of Jeremy's
6 medical needs, would you have allowed Jeremy to be
7 treated at Small Smiles.

8 MR. McPHILLIAMY: Objection.

9 MR. FIRST: Objection.

10 MR. NOWATNY: Objection.

11 THE COURT: Overruled.

12 A. Absolutely not.

13 Q. Why not?

14 MR. McPHILLIAMY: Objection.

15 A. Money over the child's -- no.

16 Q. Okay.

17 A. No.

18 Q. Now, you had been asked about, you know, that
19 you weren't preparing Jeremy to go to Small Smiles.
20 Do you remember that, and you should if you were in
21 the car and his heart rate could have gone up in the
22 car and all that stuff, do you remember that?

23 A. Yes.

24 Q. Did Small Smiles ever give you any instructions
25 on what to do with Jeremy once he left their facility

1 and how to get him ready to come back?

2 A. No.

3 Q. If they did, would you have followed those
4 instructions?

5 A. I would have tried.

6 Q. Okay. And why is it that you had the need not
7 to tell Jeremy where he was going?

8 A. Because I thought he needed the work that he
9 said that he had all this stuff done. He needed the
10 work. I wanted to get him what he had to have done.

11 Q. Well, do you remember the first time after the
12 5/23/06 visit you tell Jeremy, Jeremy, we're going to
13 Small Smiles, do you remember that?

14 A. Yes.

15 Q. What happens?

16 A. He thrashed.

17 Q. Freaks out, right?

18 A. Uh-huh. Yes.

19 Q. So why do you then -- then what do you do next?

20 A. I bribe him.

21 Q. Okay. And you don't tell him, right?

22 A. After awhile, no, I don't tell him. We just go
23 and deal with it once we get there.

24 Q. So it's either he freaks out at home?

25 A. Or freaks out in the car when we get there.

1 Q. Okay. All right. Now, you were asked some
2 questions about what Dr. Ballini had told you. Had he
3 ever had any criticism of Small Smiles. Do you
4 remember that testimony? That questioning? Or no
5 tell me?

6 MR. McPHILLIAMY: Objection, hearsay.

7 THE COURT: Overruled.

8 A. Can you repeat it?

9 Q. Okay. Do you remember Dr. Ballini telling you
10 that Jeremy had a million dollar mouth?

11 MR. McPHILLIAMY: Objection, beyond the
12 scope and hearsay.

13 THE COURT: Uhm, I will sustain it on
14 hearsay.

15 Q. Okay. Uhm, did counsel ask -- did you -- did
16 counsel ask everything about what Dr. Ballini told you
17 about Small Smiles?

18 MR. McPHILLIAMY: Objection.

19 THE COURT: Overruled.

20 A. Did they ask me everything about what?

21 Q. I'll move on. The -- before Small Smiles
22 restrained Jeremy three times, did they ever offer you
23 a referral to some other place?

24 A. No.

25 Q. Did they ever say, well, you know, we know some

1 other people who might be able to do it differently or
2 give you that option?

3 A. No.

4 Q. All right.

5 MR. HIGGINS: Chuck, can I please see the
6 August 31st, 2006, Dr. Aman treatment
7 authorization form, please.

8 Q. Okay.

9 MR. HIGGINS: I'm sorry. My mistake. I
10 meant the 5/23/06 treatment form.

11 Q. Kelly, let me ask you something, and this is in
12 evidence, so I'm going to show you. You see these
13 things here these -- says -- seems to say NSPC. That
14 type of thing and after the hatch marks there. You
15 see that?

16 A. Yes.

17 Q. All right. You told us earlier that you had
18 never heard the word pulpotomy; is that correct --

19 A. Right.

20 Q. -- at Small Smiles? If I ask you to assume
21 that PC means pulps and crowns which means a
22 pulpotomy, would you be able to tell me whether that
23 was ever discussed with you on May 23rd, 2006?

24 A. No. I don't remember, but no. I've never
25 heard of pulpotomy.

1 Q. Okay. All right. Do you know whether that
2 NSPC was added, those things were added after you
3 signed that form?

4 A. I don't know that.

5 Q. Okay. Now, you were asked some questions
6 about -- tell me how Dr. Ballini came in? When did
7 you first find out about Dr. Ballini as this potential
8 source of treatment?

9 A. Chuck's mother said that my niece --

10 MR. McPHILLIAMY: Objection. Hearsay.

11 THE COURT: It's not being offered for the
12 truth. Overruled.

13 A. Chuck's mother said that my niece was going to
14 a new dentist in Rome and he was taking Medicaid and
15 Child Health Plus.

16 Q. Okay. And this was after the last visit with
17 Small Smiles, correct?

18 A. This was a long while after because he was
19 suppose to have spacers and it was a big thing.

20 Q. Okay. You were asked some question -- I
21 believe the testimony was something about eleven or
22 November of 2009 -- it was actually January of 2009,
23 wasn't it when you first went to see Dr. Ballini?

24 A. I don't remember the exact date.

25 Q. Okay. You were asked some questions by my

1 esteem counsel about Jeremy just basically crying,
2 like any other dental procedure, you know, no big
3 deal. Do you think that he suffered over and above
4 what a child would suffer from a good and acceptable
5 pediatric dental practice?

6 MR. McPHILLIAMY: Objection.

7 MR. FIRST: Objection.

8 MR. NOWATNY: Leading.

9 THE COURT: Sustained.

10 Q. Do you believe Jeremy suffered unnecessarily at
11 Small Smiles?

12 A. Yes.

13 MR. HIGGINS: That's all I have.

14

15 RE-CROSS-EXAMINATION

16 BY MR. NOWATNY:

17 Q. Miss Varano, did you ever tell Small Smiles
18 folks that you were having to lie to your son to get
19 him to come down to go to the visits?

20 A. No. Like I said, most of them didn't look like
21 they were happy. I didn't tell any of them.

22 Q. So you -- your son was, at least the first few
23 visits, very unhappy going into the Small Smiles
24 clinic, right?

25 A. Yes.

1 Q. Okay. Now, when you first went to Small Smiles
2 on May 23rd, 2006, you met with Dr. Bonds, he came out
3 with a big list. One of the things he mentioned to
4 you was, I have eleven teeth here, and you will need
5 fillings and crowns, right?

6 A. Yes.

7 Q. So you got that from Dr. Bonds on that first
8 conversation, right?

9 A. Yes.

10 MR. NOWATNY: Could you put up that
11 exhibit. Blowup right here. Blowup that space.

12 Q. Take a moment, can you see crowns written
13 anywhere on here?

14 A. No.

15 Q. But he talked to you about crowns, right?

16 A. He told me that he would be putting crowns on
17 his four front teeth.

18 Q. So not only did -- thank you. Not only did he
19 mention there were going to be crowns, which aren't
20 listed specifically on here, but it's going to be
21 those four front teeth that actually got the crowns
22 right?

23 A. Yes.

24 Q. So when you left on May 23, 2006, you knew that
25 was part of that treatment plan and, in fact, that's

1 what was done on the second visit, right?

2 A. Yes. He told me they were all cavities.

3 MR. NOWATNY: Thank you. Nothing further.

4 MR. McPHILLIAMY: No questions.

5 MR. HIGGINS: One quick follow-up.

6

7 RE-REDIRECT EXAMINATION

8 BY MR. HIGGINS:

9 Q. Kelly --

10 MR. HIGGINS: Could you please just leave
11 that up here. Could we just get it back the way
12 it was, if you don't mind. And thank you again.

13 Q. Under D, see where it says New Smile, see that?

14 A. Yes.

15 Q. Do you know if that refers to a crown?

16 A. I don't know.

17 MR. HIGGINS: Okay. Thank you. No
18 further questions.

19 THE COURT: Okay. You may step down.

20 (witness excused)

21 THE COURT: All right. Next witness.

22 MR. LEYENDECKER: Your Honor, at this time
23 we would like to play the video deposition of Mr.
24 Al Smith, and I believe it's about fifteen
25 minutes, plus or minus.

1 THE COURT: Okay.

2 TRIAL JUROR: Can you shut this off when
3 you are not using this?

4 THE COURT: Sure.

5 MR. FIRST: Judge, may we approach?

6 THE COURT: Sure.

7 (A discussion off the record at the Bench, all
8 counsel present.)

9 THE COURT: We're going to take our
10 afternoon recess right now. Fifteen minutes.
11 Don't talk about the case. Don't do any research.

12 (Proceedings in recess at 2:35 p.m..)

13 THE COURT: All right. Would counsel
14 approach, please.

15 (A discussion off the record at the Bench, all
16 counsel present.)

17 (The following was heard in Open Court, outside
18 the hearing of the jury.)

19 THE COURT: Okay. Mr. Hulslander will
20 make an objection. Okay.

21 MR. HULSLANDER: Yes, Judge. As we
22 discussed this morning, we object vigorously to
23 any testimony or exhibits with respect to the
24 television news story that occurred in 2007.

25 That was a television news story that

1 occurred as a result of some interviews and
2 filming at the Maryland clinic.

3 THE COURT: Yup.

4 MR. HULSLANDER: And that Maryland -- what
5 happened at that Maryland clinic with respect to
6 papoosing over a year after Jeremy Bohn was
7 papoosed has nothing whatsoever to do with this
8 case.

9 The fact that Dr. Williams was employed at
10 the center there and said that papoosing, you
11 know, helps to get the patients in and out, has
12 nothing whatsoever to do with what happened in
13 Syracuse in 2006.

14 THE COURT: Okay.

15 MR. HULSLANDER: And as a result it should
16 be precluded. It's prejudicial. It's not only
17 prejudicial, it is inflammatory. It plays to the
18 jury's emotions. It has nothing whatsoever to do
19 with this case.

20 I know that you're reserving decision with
21 respect to the exhibit, which is a transcript of
22 it, which I object to, it doesn't matter because
23 basically they read from the exhibit as part of
24 the testimony as if it's admitted.

25 So you know, in my view, none of it should

1 come in. It's absolutely 100 percent inadmissible
2 in this courtroom and we object strenuously to it.

3 MR. FIRST: I would join in the objection.
4 I would note, in addition to the fact that it's
5 post Jeremy Bohn, it's also post Old FORBA's
6 ownership of FORBA and it's highly prejudicial to
7 us coming into this case a media report that has
8 nothing to do with what happened in Syracuse and
9 what happened to Jeremy Bohn, and I would submit
10 it is highly prejudicial and should not come in.

11 MR. LEYENDECKER: Your Honor, I would
12 point out that Dr. Knott took the stand -- excuse
13 me, Mr. Stevens, you have your shot at it.

14 MR. STEVENS: The -- I join in the
15 objection of my colleagues for the -- from Old
16 FORBA and New FORBA and renew my objection that
17 this is exactly why my clients couldn't possibly
18 get a fair trial cheek by jowl with information
19 about what other dentists do in other
20 circumstances, to tar and feather them with events
21 and acts that they have no control over and no
22 relation to. We ask for a mistrial. We ask for
23 severance. We renew those motions. We object to
24 this testimony.

25 THE COURT: Okay.

1 MR. LEYENDECKER: And, Your Honor, I would
2 say that Dr. Knott has taken the stand, and by the
3 way, Dr. Knott was responsible for the Syracuse
4 clinic, Regional Director for Old and New FORBA.

5 He took that stand and testified that they
6 were -- the FORBA dentists were trained to treat
7 these kids, to get them in and out quickly with
8 speed and that's consistent with, I believe, to be
9 the policy as reflected in the rest of the proof
10 and what we will hear from Dr. Williams indirectly
11 through President Mr. Smith and then later through
12 the CEO, Mr. Lindley, who authorized the interview
13 and those comments.

14 THE COURT: Okay.

15 MR. HULSLANDER: One comment in response
16 to that, Judge. You have already ruled during Dr.
17 Knott's testimony that papoosing was post October
18 of 2006.

19 THE COURT: We already went over this,
20 Kevin. What I ruled was that post event, post
21 papoosing changes were not permitted. That was
22 the extent to which I ruled that you weren't going
23 to have remedial measures introduced into this
24 case, so that was what the 2007 dealt with. Okay.

25 MR. HULSLANDER: The papoosing that

1 occurred after, whatever they did after Jeremy was
2 papoosed is completely irrelevant.

3 THE COURT: Okay.

4 MR. HULSLANDER: It has no -- it has no
5 relevance to any legal action cause of action in
6 this case.

7 THE COURT: Okay. Thank you.

8 MR. FIRST: Judge, I would also like to
9 note that what Kevin Leyendecker says is wrong.
10 Dr. Knott was never the regional with respect to
11 Syracuse before New FORBA came in, so he would
12 have no basis of knowing what he claims he said.

13 THE COURT: Okay. Ready to bring the jury
14 in.

15 (Jury seated in the jury box at 3:00 p.m..)

16 THE COURT: Sometimes things take longer
17 than I expected. I apologize. Are we ready to
18 proceed?

19 MR. LEYENDECKER: Yes, Your Honor. Your
20 Honor, the Plaintiffs are offering the deposition
21 testimony of Mr. Al Smith.

22 (Whereupon, the videotaped testimony of Al
23 Smith is played in Open Court.)

24 THE COURT: Okay. Next witness?

25 MR. HIGGINS: Okay. We call Jeremy Bohn.

1 I'll go get him, actually.

2

3 JEREMY BOHN, having been called as a witness and
4 being first duly sworn, testified as follows:

5

6 THE COURT: See that guy with the glasses
7 on with his arms crossed right, there he has to be
8 able to hear you. All right, so keep your voice
9 up.

10

11 DIRECT EXAMINATION

12 BY MR. HIGGINS:

13 Q. Jeremy, how are you doing today?

14 A. Good.

15 Q. All right. So you got off from school today?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. All right. What grade are you in now, Jeremy?

20 A. Sixth grade.

21 Q. All right. Where do you go to school?

22 A. I go to school at Oriskany.

23 Q. Elementary school?

24 A. Yes.

25 Q. Okay. Uhm, Jeremy, we talked about a few

1 things. You're going to come in today and you're
2 going to talk to all these people. Do you remember?

3 A. Yes.

4 Q. All right. One of the things I said is it's
5 very important to tell the truth; right?

6 A. Yes.

7 Q. All right. And no one will be mean to you,
8 right?

9 A. Uh-huh.

10 Q. Okay. And if you don't remember something will
11 you let me know?

12 A. Yes.

13 Q. And if they ask you questions, would you let
14 them know if you don't remember something?

15 A. Yes.

16 Q. Okay. Uhm, Jeremy, tell me about do you
17 remember anything about Small Smiles?

18 A. Uhm, I remember a few things but not
19 everything.

20 Q. Okay. Well, let's start with tell me the --
21 just tell me one thing that you do remember?

22 A. The waiting room.

23 Q. Okay. What do you remember about the waiting
24 room?

25 A. Well, it had like colors and it was colorful.

1 Like it had windows mostly on the -- well, I don't
2 remember that. I think it had windows. And it had
3 colorful floors. Colorful walls. Had a toothbrush.
4 If you had to go to the bathroom, you would take the
5 toothbrush.

6 Q. Okay.

7 A. And it had like seats along the wall, and a big
8 TV up in like the part of the like wall like ceiling.

9 Q. Okay.

10 THE COURT: Can you try to keep your voice
11 up just a little bit louder?

12 THE WITNESS: All right.

13 THE COURT: Okay.

14 Q. And what else do you remember about Small
15 Smiles?

16 A. I remember that there was a small dentistry
17 room where you get your teeth done, and they had
18 cabinets and like -- and it had like -- just like the
19 seat, like the little seat you can sit in to get your
20 teeth checked on and worked on.

21 Q. Okay. Okay. And what do you remember -- do
22 you remember anything about the people at Small
23 Smiles?

24 A. Uhm, I remember -- I don't really remember the
25 people. I know that they were -- well, they were I

1 guess nice, but then again they like -- like I don't
2 remember fully, but they were -- they were pretty
3 nice, I guess.

4 Q. Okay. Do you remember whether they were any
5 different when you were out front than when you went
6 in the back?

7 A. Yes.

8 Q. All right. Tell us about that?

9 A. Well, they would -- they were a little
10 aggressive, and they got more angrier the more you
11 like -- like -- cause they would force you to do
12 stuff, and I don't remember much. It's just I
13 remember that they would force me and that I couldn't
14 -- they would -- like they would like get angry. They
15 would get more angry the more you wouldn't like --

16 Q. What? Do stuff?

17 A. Yeah. The more you would have like attention
18 span, I guess.

19 Q. Okay. Jeremy, again, it's very important for
20 everybody. Do you remember anything else about Small
21 Smiles?

22 A. Uhm, that's mostly all I remember.

23 Q. Okay. All right. Let's talk about Dr.
24 Ballini. Who is Dr. Ballini?

25 A. He is my dentist currently.

1 Q. Okay. What do you think about him?

2 A. He's cool.

3 Q. Okay. Why is that?

4 A. Cause he's nice and he has patience, and he
5 doesn't -- like he gives you time and he like most --
6 he doesn't do much work. He checks my teeth. He
7 makes sure I have everything. He asks me do you need
8 water, you know.

9 Q. Okay. How do you feel about going to Dr.
10 Ballini?

11 A. Good. I'm not worried. I don't -- it's not
12 like I am worried. I am fine going to him. It's not
13 like -- it's not like I hate going. I don't like
14 going, though. It's -- I don't hate it, though,
15 because he's nice and...

16 Q. Okay. Uhm, Jeremy, is your homework done for
17 today?

18 A. Excuse me.

19 Q. Is your homework done for today?

20 A. Uhm, well, from last night, yes.

21 Q. Okay. Going to do it when you go home?

22 A. Well, I don't know what homework I have.

23 Q. Okay. All right.

24 MR. HIGGINS: Thank you for coming in
25 today, Jeremy.

1 THE WITNESS: Uh-huh.

2 MR. FIRST: Jeremy, hi. I don't know if
3 you remember me. I asked you a few questions
4 awhile back. I'm not going to ask you any
5 questions today. Thank you for coming.

6 THE COURT: All right.

7 MR. McPHILLIAMY: Hi, Jeremy, we've met
8 before, haven't we?

9 THE WITNESS: Uhm, I'm not sure if I
10 remember.

11 MR. McPHILLIAMY: I think I met you the
12 same time this gentleman in front of me we met.
13 That okay if I don't ask you any questions today?

14 THE WITNESS: Uh-huh.

15 MR. McPHILLIAMY: Is that okay with you?

16 THE WITNESS: Yes.

17 MR. STEVENS: Have a wonderful day,
18 Jeremy.

19 THE WITNESS: You, too.

20 THE COURT: Okay. All right. You may
21 step down. Thank you.

22 (witness excused)

23 MR. LEYENDECKER: At this time, Your
24 Honor, the Plaintiffs would offer the deposition
25 testimony of Michael Lindley via videotape and

1 it's about fifteen minutes.

2 THE COURT: Okay.

3 MR. HULSLANDER: Just for the record,
4 Judge, too, we want to renew the same objections
5 we had with respect to Dr. Smith's.

6 THE COURT: Okay. The one exhibit that
7 I'm reserving on. Was there something else?

8 MR. HULSLANDER: That and anything that
9 you would -- we talked about.

10 MR. LEYENDECKER: I -- like the plan I
11 understood from Mr. Dorr, we play the videotape
12 this afternoon as it relates to Lindley and not
13 show the exhibits. It's a relatively short tape.

14 THE COURT: Okay.

15 MR. FIRST: Just note my same objection.

16 MR. STEVENS: Join.

17 (Whereupon, the videotaped testimony of Michael
18 Lindley was played in Open Court.)

19 THE COURT: Okay. Well, good news. We
20 are going to break ten minutes early today. Have
21 a great night. Don't talk about the case with
22 anybody. Don't do any independent research.
23 We'll start tomorrow morning at nine.

24 (Proceedings in recess at 3:48 p.m..)

25 THE COURT: We're off the record.

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C E R T I F I C A T I O N

It is hereby certified that I am an Official Court Reporter in the Fifth Judicial District, State of New York; that I attended the foregoing proceedings as acting Senior Court Reporter, made stenotype notes thereof; and that the same is a true, accurate and complete transcript of the proceedings had therein to the best of my ability and knowledge.

Anne M. Messineo, RPR

DATED: October 2, 2013.

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