

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 3, 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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I N D E X

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1 (Morning Session - October 3, 2013.)

2 THE COURT: Morning.

3 MR. HIGGINS: Morning, Judge. Judge, we
4 bring the jury in, we have one issue. Just on
5 Chuck Bohn, he's been unavailable. He's been
6 outside the jurisdiction. He got a job, went to
7 Minneapolis, Minnesota and has been driving a big
8 long haul trailer. He got a new truck and
9 returned to New York Tuesday night.

10 He was suppose to leave last night and he is
11 loading his truck today. He is leaving tomorrow
12 morning again on another three- or four-week long
13 haul thing. So we still intend to read his
14 transcript.

15 The last representation I made to the Court
16 was that he was out of the state, and I just want
17 to update the Court, but we're still intending to
18 read his transcript.

19 THE COURT: All right. Thank you.

20 MR. HIGGINS: Judge, I'm sorry, again, we
21 have two or three objections. We narrowed down
22 everything except for two or three on Mr. Bohn's
23 readings.

24 THE COURT: Right now? Are we going to do
25 the readings right now?

1 MR. HIGGINS: Yes. We can do it -- yes.

2 THE COURT: There were objections by
3 defendants to Bohn's readings?

4 MR. HIGGINS: On the other side, on what
5 they will read in. I will whittle it down to two
6 or three.

7 THE COURT: I thought that was coming in
8 on their case so I actually didn't look at that
9 their -- I didn't realize that those read-ins were
10 coming in on the plaintiff's case.

11 MR. HIGGINS: They're not. I guess they
12 were going to read it in --

13 THE COURT: Want to.

14 (A discussion off the record at the Bench, all
15 counsel present.)

16 (Jury seated in the jury box at 9:09 a.m..)

17 THE COURT: I'm sorry. How is everybody
18 today? We ready to proceed.

19 MR. HIGGINS: Yes, we are, Judge.

20 THE COURT: Mr. Higgins.

21 MR. HIGGINS: Judge, at this time I
22 request permission to read in parts of the
23 transcript of Charles Bohn to the jury.

24 THE COURT: Okay.

25 MR. HIGGINS: Starting at page five.

1 Lines 15 through 17 question, can you state your
2 full name for the record, please. Answer, Charles
3 D. Bohn.

4 Page 6, line 17 through 18. Question,
5 what's your date of birth? Answer, 12/4/71.

6 Page 22, lines 3 through 9. Question, where
7 did you go to high school? Answer, RFA.

8 Question, and did you graduate? Answer, yeah.

9 Question, what year did you graduate? Answer,
10 '89.

11 Page 22, lines 24 and 25. Question, have
12 you attended any college? Answer is no. Page 47,
13 lines 17 through 25. Question, did you accompany
14 Jeremy on his first visit to Small Smiles?

15 Answer, every time. Question you accompanied him
16 on every visit? Answer, nodding in the
17 affirmative. I was the driver. Question, okay.

18 And so did Kelly accompany you every time as well?

19 Page 48, answer, yes. Question, was there ever a
20 time that you went on your own? Answer, I believe
21 there was maybe once or twice.

22 Question, do you know why you would have
23 gone on your own? When I say on your own,
24 obviously you're bringing Jeremy I mean without
25 Kelly? Answer, something must have happened where

1 she couldn't go because every time she'd go with
2 us.

3 Okay. Page 49, lines 1 through 9 and 14
4 through 25. Question, before he treated at Small
5 Smiles, did you make any observation with regard
6 to Jeremy's teeth where you thought something
7 maybe didn't look right or you had concerns about
8 before treating with Small Smiles? Answer, you
9 could see that they needed some work.

10 Question, what did you observe exactly, and
11 I'm asking you for a description of what you were
12 observing with respect to his teeth? Answer, oh,
13 you know, like a little bit of rot, whatever.
14 Question, and where was this located when you
15 looked inside of his mouth? Answer, I think the
16 front may be upper inside. Question, when you say
17 inside is that -- okay, I understand. So the
18 front teeth, right? Answer, right.

19 Question, but the side that your tongue --
20 your tongue side? Answer, yeah, tongue side.
21 Question, so he had to have put his head up or in
22 some other fashion to let you look inside his
23 mouth to see them? It isn't when he smiled?
24 Answer, right.

25 Question, I should ask, did you see any

1 discoloration or anything abnormal about his teeth
2 when he smiled? Answer, no.

3 Question, on how many teeth did you observe
4 this little bit of rot? Mr. Leyendecker, or
5 whatever? Question, or whatever? Answer, maybe
6 one or two.

7 Then we go to page 122, line 4. Question,
8 you mentioned the word "rot" before. What do you
9 mean by that? Objection to form. Question, how
10 would you characterize the appearance of Jeremy's
11 teeth? Answer, yellowish maybe. Yellowish or
12 maybe whatever inside.

13 Question, any of his teeth appear brown or
14 have brown specks on them before he went to Small
15 Smiles? Answer, I'm not sure.

16 Question, before Jeremy went to Small
17 Smiles, did he ever complain about any type of
18 pain or discomfort in his mouth? Answer, no.

19 Okay. Now, we're at page 55, lines 9
20 through 15. Question, do you recall Jeremy coming
21 out? Answer, no. After receiving treatment on
22 that first visit? Answer, first visit, yeah. He
23 was pretty loud and screaming and stuff.

24 Page 56, lines 21 through 25. Question, you
25 testified that he came out screaming? Answer,

1 nodding in the affirmative. Question, was he
2 yelling or was he actually screaming saying
3 something, words? Answer, just like crying, just
4 like that. Not screaming words, but crying.

5 And then I'm moving to page 57, lines 15
6 through 24. Question, and once you took Jeremy
7 into the car, can you tell me what his behavior
8 was like then? Answer he was crazy and crying and
9 stuff. I told him we'd go to Burger King or
10 something to get him a toy.

11 Question -- withdrawn. Question, how long
12 was Kelly in the Small Smiles after you took
13 Jeremy outside? Answer, maybe seven minutes.

14 Page 58, question, okay and did you bring
15 him outside and put him in his car seat and get
16 ready to go? Answer, yes. Page 58, question, how
17 long after you got outside did Jeremy continue to
18 cry? Answer, I believe until we got to Burger
19 King. Question, did you go to the Burger King in
20 Syracuse or Rome? Answer, yes. Question, or
21 somewhere else? Answer, Syracuse. Question, can
22 you estimate how far from Small Smiles to the
23 Burger King it was? Answer, twelve minutes.

24 Uhm, question, and at any point in time
25 after that first visit, did you ask Jeremy about

1 what had happened at the appointment? Answer, he
2 didn't want to talk about it.

3 Line 24, question, okay. Was he able to
4 talk to you about it? By that I mean was he
5 developmentally able at that point? Page 59, line
6 3, answer, not -- a little bit, yes.

7 Question, okay. But did you ask him what
8 happened? Answer, you know, not after Burger
9 King. Probably just before I did. But he would
10 just -- didn't want nothing to do with it.

11 Moving to page 61, line 4 through 25.
12 Question, did there come a point in time where you
13 had any discussions with anybody at Small Smiles
14 as to the work that Jeremy needed, you personally?
15 Answer, well, only one time when -- where I wanted
16 to go back in the back and they said no because
17 they said it's worse if the parents go back there.
18 They tend not to do what's got to be done.

19 Question, and can you explain that a little
20 bit further? They said that -- answer, it's
21 better off for the parents not to go back.

22 Question, okay. Can you recall or give me
23 an estimate of the number of times Jeremy treated
24 at Small Smiles? Answer, I can't recall.

25 Question, can you recall whether this point

1 where you go -- where you asked to go back was at
2 the beginning of his treatment, in the middle of
3 his treatment, at the end of his treatment? Page
4 62, lines 15 one through 15. Answer, it had to be
5 in the beginning of the visits. Question, would
6 have been the first date of treatment? Answer, I
7 can't -- I don't recall that but to -- question,
8 who did you have this discussion with? Answer, I
9 don't think it was the doctor or the dentist or
10 whatever. I think it was the nurse.

11 And question, and where did this
12 conversation take place? Answer, in the first
13 doorway. Moving to page 63, lines 20 through 25.
14 Question, was that the only time that you asked to
15 go back? Answer, no, I don't think so. I think I
16 asked like two or three times. Question, did you
17 always ask the same person? Page 64, lines one
18 through 19. Answer, no. It was different people.

19 Question, and at what point in the treatment
20 would you -- withdrawn. At what point during the
21 appointment would you go and ask to go back?
22 Answer, because he didn't want to go in so that's
23 why I'd ask to go in, and she'd say it's just
24 better off if the parents stay out in the waiting
25 room.

1 Question, would this person or persons that
2 you would have asked, would they have been at the
3 reception desk or the person calling Jeremy in or
4 something else? Answer, that comes to the door.
5 Question to call Jeremy in? Answer, yes. All
6 right.

7 I'm moving to page 65, line 19 through 25.
8 Question, did there come a point in time where you
9 stopped asking? Answer, yes. Question, why --
10 and why was that? Answer, I just felt that there
11 was no sense in keeping asking because that's what
12 they kept giving you the answer for. Like they
13 didn't want you to go back there.

14 Page 66, one through nine. Question, were
15 you happy with -- Answer, no. Question, this
16 answer? Answer, no. Question, okay. And why
17 not? Answer, because I don't -- I don't think it
18 was fair.

19 Moving over to page 67, line 10 through 19.
20 Question, did you have any concerns with the --
21 while Jeremy was going to Small Smiles, did you
22 have any concerns with the treatment that was
23 being rendered? Answer, sure. But I thought that
24 -- oh, I got to keep going. Question, yes.
25 Answer, oh, I thought that he had to have the

1 work. Had to have the work done and that they
2 were professionals.

3 Page 71, five through 25. Question, do you
4 ever recall a time where you were asked if you
5 wanted to come back with Jeremy while he was
6 receiving treatment and you -- Answer, no, never.
7 Question, and you declined? Answer, I never
8 declined.

9 Question, and if so, if I tell you that the
10 records indicate that the dad preferred to wait
11 outside, would you take issue with that? Answer,
12 that's for sure. All the parents were out there.
13 There was never -- I ain't never seen a patient go
14 in with a kid and not come back out. So I think
15 that was like the rule or something, don't let the
16 parents in there.

17 Question, and again if there's a note in the
18 record that indicates father didn't want to go in
19 operating room, would you also take issue with
20 that? Answer, sure.

21 Question, other than the first visit, there
22 aren't any other visits that you can specifically
23 recall? Answer, I was at every one of them. Mr.
24 Leyendecker, she's asking if you have a specific
25 memory of other visits besides the first one?

1 Answer, no.

2 Moving to page 75, lines 14 through 19.

3 Question, okay. Do you know what a papoose is?

4 Answer, no. Question, have you ever heard of a
5 immobilization? Answer, no.

6 Page 77, lines 22 through 25. Question,
7 have you ever accompanied any of your other
8 children to a dentist visit? Answer, yes.

9 Question, and have you ever been in the
10 treatment -- have you ever been in the room while
11 you -- your other children were receiving
12 treatment? Answer, yes.

13 Page 79, line 7 through 10. Question, how
14 did it come to be that you were in the room with
15 Kelsey? Answer, cause she wanted me to be in the
16 room.

17 Page 86, lines 3 through 9. Do you know how
18 many dentists Jeremy saw when he was at Small
19 Smiles? Answer, no. Question, and again you said
20 you don't recall ever meeting with the dentist, is
21 that -- answer, I never met, no.

22 Page 105, lines 15 through 19. You just
23 testified that when you would be in the waiting
24 room every child would come out crying. Is that
25 what you observed? Answer, yes.

1 I'm moving to page 110, lines 18 through 25.
2 Did Jeremy ever tell you that he was restrained in
3 any way during the treatment at Small Smiles?

4 Answer, well sort of. He sort of got around to
5 saying something. I didn't really understand what
6 he was saying but -- Question, do you remember
7 which visit this was? Answer, no. Question, just
8 one of them? Just one of the ones or who knows
9 how many.

10 Question, do you remember what he said?

11 Answer, that they held him down or something. I
12 don't know. Question, did he say that they used
13 any sort of device to hold him down? Answer, no
14 he didn't really. Did you have any concerns about
15 that? Answer, sure. Question, what were your
16 concerns? Answer, I never heard of that kind of
17 stuff from any dentist. Question, did you voice
18 those concerns to anyone at Small Smiles? Answer,
19 oh, no.

20 Page 124, lines 12 through 21. Question,
21 did you make any complaints to anyone at Small
22 Smiles on the first visit with Jeremy? Answer,
23 yes. Question, what complaints did you make?
24 Answer, I wanted to go back. Question, okay. And
25 they would not allow you, correct? Answer, the

1 nurse or whatever it is, yeah.

2 Page 128, lines 25. Question, did you ever
3 have any issues with getting Jeremy to Small
4 Smiles appointment? Answer, yeah. Question, what
5 types of issues did you have? Answer, after a few
6 times, after a couple of times he didn't want to
7 go back. We had to bribe him and tell him -- lie
8 to him, tell him we're not going for a car ride
9 and once he got close to it and seen the place,
10 oh, no, no, no. Question, he would become upset?
11 Answer, yes.

12 This is the final read at page 138, line 6
13 through 21. Chuck, you were asked a bunch of
14 questions about Dr. Patel, which was the dentist
15 that he went to before Small Smiles. My question
16 to you is as between your memory and Kelly's
17 memory as to whether she went back with Jeremy to
18 the treatment room, which of the two do you think
19 is more reliable? Answer, I know I stayed in the
20 waiting room.

21 Question, as between your memory and her
22 memory as to whether she went back either your
23 memory on that or her memory on that which one is
24 more reliable of the two? Answer, I'd have to say
25 hers.

1 That concludes the plaintiff's read of Chuck
2 Bohn.

3 THE COURT: Thank you, Mr. Higgins. Okay.
4 At this time, if the witness were available he'd
5 be here to testify and the defendants would have
6 an opportunity to cross-examine that witness.

7 So what we are going to do is let the
8 defendants read in part of the testimony, too.
9 Again, I told you earlier that the parties had an
10 opportunity to take the testimony of witnesses
11 under oath before the trial, and one of the
12 defendant's counsel is going to do that. Okay.

13 MR. NOWATNY: Morning, Your Honor. Thank
14 you.

15 THE COURT: Be sure to go slowly.

16 MR. HIGGINS: Judge, so I'm clear, this is
17 being offered on the defendants' case?

18 THE COURT: On the defendants' case,
19 correct.

20 MR. NOWATNY: Page 50, line 25 through
21 page 51, line 7. Question, I want to talk to you
22 about the first day that Jeremy went to Small
23 Smiles. Can you tell me what you recall when you
24 first walked in in terms of what you observed, the
25 building, the people? Answer, it was pretty big.

1 It was a lot of kids.

2 Page 59, lines 18 through 24. Question, as
3 you sit here today, do you have any complaints
4 about that first visit? Answer, no. Question, do
5 you have any understanding of what type of work
6 was performed at that first visit? Answer, no.

7 Page 65, lines 1 through 12. Question, that
8 they -- did they explain to you any other reason
9 than it was better off for the parents? Answer,
10 that the kids would -- I don't know. I don't
11 know. Do what they want to be done or something.
12 With the parents in there, they said they wouldn't
13 behave right or something. Question, kids would
14 be more uncooperative, is that a fair statement?
15 Answer, yes.

16 Page 67, lines 5 through 9. Question, did
17 you ever see any type of signs in Small Smiles
18 that said parents weren't allowed or did you read
19 anything like that? Answer, no.

20 Page 68, lines 9 through 13. Question,
21 okay. Did you ever have any discussions with
22 Kelly with respect to the extent of the work that
23 they were performing? Answer, no.

24 Page 69, lines 12 through 15. Question, did
25 you ever observe any bruises or marks on him, on

1 Jeremy after he treated at Small Smiles? Answer,
2 not that I recall.

3 Page 70, lines 11 through 15. Question,
4 okay. Did there ever come a point in time where
5 you asked Jeremy what happens when you go back in
6 and are treated at Small Smiles? Answer, I don't
7 recall.

8 Page 75, lines 1 through 5. Question, and
9 would you bring your child back to a treater that
10 you felt was not treating your child properly?
11 Answer, no.

12 Page 76, lines 15 through 22. Question,
13 what do you mean when you say from the gummy
14 bears? Answer, that's where the -- I don't know.
15 I'm not a dentist. I'm just saying I could just
16 see that's -- 'cause that's what he use to like to
17 eat. So that set in the backside of his teeth and
18 maybe it rotted out or something.

19 Page 77, lines 8 through 16. Question,
20 okay. Has anyone -- withdrawn. Have you spoken
21 to any dentist that has been critical of the care
22 that Jeremy received at Small Smiles? Answer, no.

23 Question, have you spoken with anybody other
24 than your attorneys that were critical of the care
25 that Jeremy received? Answer, no.

1 Page 104, lines 8 through 23. Question,
2 when you say you talked to them, that you were
3 stuck at this place, what do you mean by that?
4 Answer, well, they were saying they didn't want to
5 come. A lot of people had to drive. Like I think
6 it was Auburn. Some lady had to drive from Auburn
7 to Syracuse. I said that ain't nothing. We had
8 to drive from Rome to Syracuse.

9 Question, were you talking about the limited
10 availability of providers for your children?

11 Answer, yes. Question, and the distance you had
12 to travel? Answer, yes.

13 MR. HIGGINS: Judge, at this time, I'd
14 like to read in page 103 under CPLR 3117(b) in an
15 interest of fairness.

16 THE COURT: Okay.

17 MR. HIGGINS: Just on that one issue.
18 Page 103, lines 23 through 25. Under what
19 circumstances did you speak with these -- Answer,
20 in the waiting room. Okay. You recall what you
21 discussed? Answer, it's just that we're stuck at
22 this place. All the kids use to come out crying.
23 I don't know if it was just a normal thing or
24 what. Thank you.

25 MR. NOWATNY: Page 106, lines 9 through

1 23. Question, have you spoken with anyone that
2 has advised you that the work that was performed
3 at Small Smiles was performed improperly? Answer,
4 no.

5 Question, have you noticed any behavioral
6 changes with Jeremy since he treated at Small
7 Smiles? Answer, no.

8 Question, did you note any changes in his
9 academics, I realize that when he was just like --
10 when he was just likely in kindergarten or first
11 grade, but any type of changes in his academics?
12 Answer, no.

13 Pages 109, lines four through 12. Question,
14 earlier you mentioned that you talked with Dr.
15 Patel about he had mentioned gummy bears after the
16 treatment with Jeremy? Answer, yeah.

17 Question, did he mention that the gummy
18 bears were causing decay? Answer, I think that's
19 what he got. You know, in a round about way,
20 yeah.

21 Page 121, lines 8 through 19. Question,
22 okay. Now, you mentioned that Jeremy had some
23 type of, as you say, rot on his two upper front
24 teeth on the tongue side. Mr. Leyendecker, object
25 to the form. Question, where was this rot in

1 Jeremy's mouth that you saw before he went to
2 Small Smiles? Mr. Leyendecker, objection to the
3 form. Answer, tongue and side, whatever.

4 Page 125, lines 4 through 10. Question, let
5 me ask you this question. After the first visit
6 when you took Jeremy to Small Smiles, did you have
7 any complaints about any other visit after the
8 visit with regard to his care and treatment at
9 Small Smiles? Answer, no.

10 Page 129, lines 15 through 18. Question,
11 has anyone ever told you that the dental treatment
12 rendered to Jeremy at Small Smiles was
13 unnecessary? Answer, no. Thank you, Your Honor.

14 THE COURT: Okay. Thank you. Next
15 witness?

16 MR. FRANKEL: Your Honor, we call Dr.
17 Naveed Aman.

18
19 **NAVEED AMAN** , having been called as a witness and
20 being first duly sworn, testified as follows:

21
22 THE COURT: Before we do that, there was a
23 request to admit into evidence Exhibits 279, 280
24 and 281 that were utilized in connection with the
25 videos yesterday.

1 The Court is going to receive Exhibit 281
2 and will not receive exhibit 279 or 280.

3

4 DIRECT EXAMINATION

5 BY MR. FRANKEL:

6 Q. Morning, Dr. Aman.

7 A. Morning.

8 Q. I'm going to hand you what's a copy of your
9 deposition that you gave in this case. Do you
10 remember that?

11 A. Yes.

12 Q. Mr. Leyendecker questioned you, correct?

13 A. Yes.

14 Q. You and I have not met before this trial, have
15 we?

16 A. No.

17 Q. Uhm, some questions about your deposition. Did
18 you -- you -- you answered questions in an informal
19 setting in a conference room with lawyers there, a
20 court reporter present, and you swore to tell the
21 truth; is that right?

22 A. Yes.

23 Q. And then after the deposition was over the
24 court reporter created a transcript like the one
25 that's -- it is the one -- the original that's in

1 front of you, correct?

2 A. Yes.

3 Q. And after that you had a chance to read it and
4 make corrections, correct?

5 A. Yes.

6 Q. And you made two or three minor corrections and
7 signed it, correct?

8 A. Yes.

9 Q. And those were the only things that you thought
10 of the whole transcript, only changes you needed to
11 make, right?

12 A. Yes.

13 Q. And you believe your testimony was accurate?

14 A. Yes.

15 Q. And it was transcribed accurately?

16 A. Yes.

17 Q. All right. Dr. Aman, is it true that you grew
18 up in Pakistan?

19 A. Yes.

20 Q. You went to college in Benghazi, Libya; is that
21 true?

22 A. That's true.

23 Q. You moved back to Pakistan after college to go
24 to dental school?

25 A. That's right.

1 Q. And you worked for a year or for several years
2 in Pakistan as a dentist and then an orthodontist; is
3 that right?

4 A. That's right.

5 Q. You came to the United States in 2001?

6 A. That's right.

7 Q. And you were looking for a better life here in
8 the United States?

9 A. That's right.

10 Q. You went to work in New Jersey as a dental
11 assistant for a couple of years; is that true?

12 A. That's right.

13 Q. And then you went in to a program -- a dental
14 program in Boston that's designed for foreign trained
15 dentists; is that right?

16 A. That's right.

17 Q. That dental program is that the same one that
18 Dr. Khan went to?

19 A. Yes.

20 Q. All right. And that program is a program where
21 foreign dentists can in two years get the same license
22 that dental students in the United States normally go
23 for four years; is that true?

24 A. That's right.

25 Q. You finished dental school in the United States

1 in 2005?

2 A. Yes.

3 Q. And you interviewed and were hired by Mr. Dan
4 DeRose, right?

5 A. That's right.

6 Q. You graduated in June and you went to work
7 immediately for Small Smiles in Syracuse; is that
8 right?

9 A. In August.

10 Q. In August?

11 A. Yes.

12 Q. Okay. So within a couple of months first job
13 you had, right?

14 A. That's right.

15 Q. And you signed an agreement, employment
16 agreement, right?

17 A. Yes.

18 Q. And under that agreement you could be
19 terminated for any reason with a 90-day notice; is
20 that true?

21 A. Yes.

22 Q. Before you actually went to work at the Small
23 Smiles clinic in Syracuse, you went out to Colorado
24 for some training; is that true?

25 A. Yes.

1 Q. And that was the FORBA headquarter training
2 program?

3 A. That was in Denver, Colorado.

4 Q. During that training program you watched the
5 trainers put fillings and crowns on patients while
6 they were in papoose boards; is that true?

7 A. That's right.

8 Q. And you understood from what they told you and
9 what you observed that papooosing was one of the
10 treatments at FORBA, correct?

11 A. One of the treatments, yes.

12 Q. Yes. One of the treatments?

13 A. One of the -- one of the ways to -- to work on
14 a kid, yes.

15 Q. Yes. And the trainers there made it clear to
16 you that they expected that you would be using a
17 papoose board when you went back to Syracuse; is that
18 true?

19 A. If needed.

20 Q. If needed?

21 A. Yes.

22 Q. All right. Well, when you were in Pakistan,
23 you worked on kids, you did dental work on kids who
24 were under five years old, right?

25 A. Yes.

1 Q. And you had not used a papoose board on kids in
2 Pakistan, had you?

3 A. No.

4 Q. Had you done any restraints on any children in
5 Pakistan? Had you?

6 A. The -- if they are smaller kids which are not
7 mature, five or four years old who cannot sit still,
8 the parents would hold, and the family would hold the
9 leg and the hands, and you can work on the patient.

10 Q. Okay.

11 A. Just like sort of a restraint or you can say
12 sort of papoose you can --

13 Q. Well, this board that we're talking about, you
14 didn't use this in Pakistan, did you?

15 A. No, I did not.

16 Q. And while you were working at the clinic in New
17 Jersey before you went to dental school, were any of
18 the kids there restrained on a papoose board?

19 A. No.

20 Q. So the first time you, Dr. Aman, used a papoose
21 board was Small Smiles; is that true?

22 A. Yes.

23 Q. You worked at the Syracuse clinic from 2005
24 through 2010?

25 A. Yes.

1 Q. And during that time you received regular
2 raises; is that true?

3 A. Very nominal.

4 Q. Nominal?

5 A. Yes.

6 Q. Keep your voice up.

7 THE COURT: You can't hear. Have to
8 speak.

9 THE WITNESS: Very nominal.

10 Q. By the --

11 THE COURT: Okay. We have to stop
12 clicking over there. Thank you.

13 THE WITNESS: Sorry.

14 A. Very nominal.

15 Q. By the time you left, Dr. Aman, by the time you
16 left Small Smiles you were making about \$165,000 a
17 year; is that true?

18 A. With all benefits. The salary was low.

19 Q. Okay. And you left. And now is it true that
20 you work for another one of these chains called Aspen
21 Dental?

22 A. I use to.

23 Q. You don't work there any more?

24 A. No.

25 Q. Okay. You still work here in the Syracuse

1 area?

2 A. I work in Cicero. Another practice.

3 Q. Cicero?

4 A. Yes.

5 Q. Okay. Uhm, when you were working -- when you
6 went to work for Small Smiles in Syracuse, you thought
7 that Dan DeRose owned the clinic; is that true?

8 A. At that time I recall because he asked me after
9 so many years that's what I recall at that time.

10 Q. You saw Dan DeRose as the owner and no one
11 else, is that what you say?

12 A. At the interview there were one or two people
13 more.

14 Q. One or two other people helped interview, but
15 it in terms of who you thought owned the clinic you
16 thought it was Mr. Dan DeRose; is that true?

17 A. At that time I must have forgotten who was the
18 owner so I said Dan DeRose. That's the one I remember
19 the name.

20 Q. Right. And you knew Mr. DeRose was not a
21 dentist, was he?

22 A. Yes.

23 Q. He was a businessman --

24 A. Yes.

25 Q. -- right?

1 A. Yes.

2 Q. And did you know whether nondentists could own
3 dental clinics in New York when you worked at Small
4 Smiles?

5 A. Can you say it again?

6 Q. Yes, sir. Did you know when you were working
7 at Small Smiles that in New York nondentists could not
8 own dental clinics? You knew that, didn't you?

9 A. I knew that, yes.

10 Q. Yes. And you knew Mr. DeRose wasn't a dentist?

11 A. Yes.

12 Q. And you knew corporations couldn't own a dental
13 clinic, could they?

14 A. That's right.

15 Q. All right. And did you ever ask any questions
16 as to how it was that Mr. DeRose was running and
17 owning the clinic and he wasn't a dentist?

18 A. I might have told Dr. Padula.

19 THE COURT: You have to speak up.

20 A. Because when the deposition was made after so
21 many years, I did not remember who was the owner, so I
22 just -- I said Dan DeRose name. I forgot Dr. Padula's
23 name.

24 Q. Well, that's because Mr. Dan DeRose is the one
25 who interviewed you and he was running the show,

1 right? Dr. Padula was not in Syracuse doing anything,
2 was he?

3 MR. McPHILLIAMY: Objection to form.

4 THE COURT: Overruled.

5 A. He was not in Syracuse, no.

6 Q. Yeah. And he never worked with you in the
7 Syracuse clinic, did he?

8 A. No.

9 Q. He didn't oversee your work, did he?

10 A. No.

11 Q. Mr. Dan DeRose, Mr. Roumph, the nondentists
12 were the ones that were directing the activities at
13 the clinic; is that true?

14 MR. FIRST: Object to the form.

15 A. I was not the lead. I was the associate
16 dentist so I don't know how things run so...

17 Q. Well, you didn't know that the communications
18 from headquarters came to the lead dentist who was Dr.
19 Randazzo for awhile and then Dr. Khan; is that right?

20 A. That's right.

21 Q. Then they would pass it on to you?

22 A. If they want to.

23 Q. Yes. So I'm not sure that you answered my
24 question. Did you ever ask anyone why is Mr. Dan
25 DeRose, this nondentist, is it okay for him to be

1 running this clinic?

2 MR. FIRST: Object to the form.

3 THE COURT: Overruled.

4 A. He was just on the administrative side. Not --
5 he was not the -- he would take care of the
6 administration. I don't know. I mean I never -- I
7 don't know what his duties were. Never paid attention
8 to it.

9 Q. All right. When you worked at the Syracuse
10 clinic, Dr. Aman, did you work hard?

11 A. I work hard, yes.

12 Q. Very hard, didn't you?

13 A. I was a hardworking person. I'm a hardworking
14 man.

15 Q. All right. And the lead dentist, Dr. Randazzo,
16 the lead when you first started working there was that
17 Dr. -- right when Dr. Turner and Dr. Randazzo
18 switched?

19 A. Yes.

20 Q. When you first got there was Dr. Turner still
21 there?

22 A. Yes.

23 Q. And shortly after that did Dr. Randazzo replace
24 Dr. Turner?

25 A. Yes.

1 Q. All right. As the lead dentist, do you believe
2 Dr. Randazzo knew you were working very hard?

3 A. I'm sure.

4 Q. Okay. Let's take a look at Plaintiff's Exhibit
5 46, which is your first evaluation after working at
6 the clinic for a few months. You recognize this
7 document, Dr. Aman?

8 A. Yes.

9 Q. And you were questioned about it at your
10 deposition, do you remember?

11 A. Yes.

12 Q. This is a semiannual performance review done by
13 Dr. Randazzo of you for the period June of 2005 to
14 December of 2005; is that right?

15 A. Yes.

16 Q. And that's your signature there on the -- right
17 where the little magnifying glass is; is that right?

18 A. Yes.

19 Q. And Dr. Randazzo's is below yours, correct?

20 A. Yes.

21 Q. You saw and you reviewed the evaluation on or
22 about December 7th, 2005, right?

23 A. Yes.

24 Q. And that was a few months before you took --
25 you first took care of Jeremy Bohn, right?

1 A. Jeremy Bohn came after.

2 Q. In 2006? In August of 2006 --

3 A. Yes.

4 Q. -- right?

5 A. Yes.

6 Q. All right. Can we look at the second page.

7 Okay. This is the actual evaluation page, right,

8 Doctor?

9 A. Yes.

10 THE COURT: You have to speak up a little
11 louder still.

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 Q. And you see on the evaluation one of the
15 things -- one of the first things that Dr. Randazzo
16 says about you in the overall performance right here,
17 is you're hardworking, right?

18 A. Yes.

19 Q. And in the section of the review called
20 attendance, attendance, punctuality, dependability,
21 reliability and time management, what kind of grade
22 did you get?

23 A. Significantly exceed.

24 THE COURT: Okay. Your head is facing
25 this way. The jury is over there. They need to

1 hear your answer so you have to either turn your
2 head and speak to them or you have to speak up.

3 Okay. Thank you, Doctor.

4 A. Significantly exceed.

5 Q. Significantly exceeds. Which of the five
6 grades is the highest grade you can get, it's an A;
7 right?

8 A. Yes.

9 Q. So where they were evaluating how hard you
10 worked, whether you were punctual, not goofing off and
11 being dependable, you got an A; right?

12 A. Yes.

13 Q. If your full grade, this overall rating had
14 been based on how hard you worked, you would have
15 gotten an A; right?

16 A. Yes.

17 Q. But they evaluated you on other basis, correct?

18 A. What basis?

19 Q. Well, let's take a look. One of the things
20 they wanted to look at was, well, your overall grade
21 right here, overall rating was achieved, right, which
22 is a C, average?

23 A. If you say.

24 Q. Well, it's your testimony, not mine. If you
25 disagree, let me know. But is achieve right in the

1 middle of the five grades? It's the middle one?

2 A. All right.

3 Q. All right. And so even though you were hard
4 working and reliable, they evaluated the quantity of
5 your work as average or C, achieved; right?

6 MR. FIRST: I object to counsel
7 characterizing it as a C. Object to the form of
8 the question.

9 THE COURT: Okay. Remember no speaking
10 objections. Objections to form. Overruled.

11 MR. FIRST: Objection.

12 THE COURT: Overruled.

13 BY MR. FRANKEL: (Cont.)

14 Q. Dr. Aman, can you answer my question? Was your
15 grade for the quantity of work average or achieved is
16 what they call it?

17 A. I don't know what is C grade. I don't know
18 about that. It's not written there.

19 Q. All right. Well, would you agree it was
20 average? It was right in the middle of the five on
21 the -- of the five evaluations it was right in the
22 middle? Says achieved, right?

23 A. Said achieved, yes.

24 Q. Okay. Okay. So even though you were hard
25 working, you got the highest grade you could get for

1 attendance and punctuality and all of those things,
2 Dr. Randazzo told you you needed to improve your
3 production, didn't she?

4 A. If you say so.

5 Q. Pardon?

6 A. It say so.

7 Q. Yes, it does. It says you need to improve
8 production, right? She couldn't have been talking
9 about how hard you were working because you got the
10 highest grade you could get for that, right?

11 A. Yes.

12 Q. What she was talking about was increasing money
13 to the clinic, improving the revenue; right?

14 A. No.

15 Q. Pardon?

16 THE COURT: His answer was no.

17 Q. Did you understand that by production, Dr.
18 Randazzo and FORBA and Small Smiles meant revenue?

19 A. If it for the better of the child.

20 Q. Pardon?

21 A. If it's for the -- for the child's benefit. If
22 this production is for the child's benefit it's okay.

23 Q. Well, do you see her saying anything about for
24 the child's benefit in your evaluation?

25 A. This is what I would get.

1 Q. What Dr. Randazzo said is the way she wanted
2 that that -- is this needs, is that what it says,
3 needs to improve production?

4 A. Yes, needs to improve production by -- I can't
5 read that.

6 THE COURT: You want to step down so you
7 can see it?

8 THE WITNESS: No, that's okay.

9 Q. Let me see if I can read it for you. If you
10 can confirm, that's great. If you can't, I want to
11 make sure we get it correct on the record. Does it
12 say by increasing, with an arrow, efficiency in number
13 of procedures. Is that what it says?

14 A. All what I understand is to -- is to work hard,
15 efficient and be productive.

16 Q. So what the message you got from this review
17 was improve -- you need to improve your production by
18 increasing the number of procedures you go; is that
19 true?

20 MR. STEVENS: Objection. Fourth time,
21 Your Honor.

22 THE COURT: Overruled.

23 A. All I understand is to --

24 THE COURT: Louder, please.

25 THE WITNESS: All right.

1 A. It was just to work hard. Be efficient and be
2 productive. If it's production is for the -- for the
3 benefit of the child, then it's okay.

4 Q. No one needed to tell you that you needed to
5 work for the benefit of the child. That's a given as
6 a dentist, correct?

7 A. That's true.

8 Q. Improving production isn't a given, that's a
9 financial consideration; right?

10 A. But if it's for the -- if what the child needs
11 and that production is for the benefit of the child
12 it's okay.

13 Q. Did you need somebody to tell you to act for
14 the benefit of the child?

15 A. It's yearly report. I never asked them to give
16 it to me.

17 Q. All right. This was how they evaluated you to
18 see whether you were measuring up to their standards,
19 wasn't that true, and whether you got a raise or not?

20 A. I got nominal raise. Look at my raise. It's
21 nothing.

22 Q. I'm asking you whether the evaluation was for
23 that purpose to see how you were doing?

24 A. I would get a, you know, yearly raise. Very
25 nominal. I don't know if it was A grade would have

1 made any difference.

2 Q. All right. Well, the second part of the
3 evaluation is a plan for dealing with these issues
4 that were identified in the first part of the
5 evaluation, right? Says right there, you see where it
6 says in conjunction with your employee, establish a
7 written development plan, limit the focus to one to
8 three areas. See that?

9 A. Yes.

10 Q. And you and Dr. Randazzo did that, right?

11 A. She wrote it.

12 Q. She wrote it and you approved it?

13 A. I never approved of anything.

14 Q. Dr. Randazzo says here's what you need to do,
15 Dr. Aman, you need to improve your production by doing
16 more procedures on each patient. Isn't that what she
17 said?

18 A. But if it's for the better -- see --

19 Q. Is that what she said?

20 A. This means that it --

21 THE COURT: Wait a second.

22 Q. Is that what she said?

23 A. That's what is written there.

24 Q. Yes, sir. And you had an opportunity and were
25 in fact encouraged right at the top there, the

1 employee is encouraged to add comments, right?

2 A. Yes.

3 Q. And you didn't have any comments, did you?

4 A. I didn't have any comments, no.

5 Q. No, sir. The plan that you -- and this written
6 development plan was do more procedures on each
7 patient, that's how you were going to improve your
8 production, right?

9 A. No. If it's -- if the patient needs like if
10 there are two fillings in one quad and you do both of
11 them and that's the best interest of the patient, you
12 do both the fillings. That's what it means. If you
13 are doing -- if you are producing -- you have to
14 understand if you're making the revenue just for
15 making the company rich, that's wrong.

16 Q. That's very wrong, isn't it, sir?

17 A. Very wrong.

18 Q. Yes?

19 A. But if you are --

20 Q. Yes?

21 A. If you are producing, you have to understand if
22 you are producing what patient needs and you're
23 working hard, and the money is generated by working on
24 the patient what he needs, what he needs, I'm not
25 creating any work, all right. If there are three

1 fillings, if there are more procedures in one and that
2 what he needs, it's the benefit of the child, I'll do
3 it.

4 Q. Well, you were doing that without Dr. Randazzo
5 telling you you needed to do more procedures on each
6 patient, you were working hard doing your best,
7 weren't you?

8 A. I'm a hardworking guy. I still work hard,
9 that's true.

10 Q. And the one objective that they -- you had in
11 this plan was improve production by doing more
12 procedures on each patient, right?

13 MR. STEVENS: Objection. Fifth time.

14 A. I can explain more again.

15 THE COURT: Wait a second. There is an
16 objection. I'm going to sustain it.

17 Q. Dr. Aman, this message of doing more work on
18 each patient didn't end with your performance review
19 at the end of 2005, did it, it kept up? You kept
20 getting that message, right?

21 A. Yes. They -- the lead dentist would talk about
22 production on monthly -- on the monthly meetings.

23 Q. Well, in February of 2006, Dr. Randazzo kept
24 urging you and the other dentists to do as much as you
25 could on each patient, didn't she?

1 A. I don't recall single incident but --

2 Q. Okay. Let's see if we can refresh your memory.

3 MR. FRANKEL: Can we look at Exhibit No.

4 97.

5 THE COURT: Is 46 in evidence and is 97 in
6 evidence?

7 MR. FRANKEL: I believe both are, yes,
8 ma'am.

9 MR. STEVENS: Number 46 is, Your Honor.

10 MR. McPHILLIAMY: Both are.

11 THE COURT: Okay.

12 BY MR. FRANKEL: (Cont.)

13 Q. Dr. Aman, you see this e-mail from Dr. Randazzo
14 to Mr. Roumph. Did you ever meet Mr. Roumph by the
15 way?

16 A. Did you ever?

17 Q. Did you ever meet Mr. Roumph?

18 A. Mike Roumph?

19 Q. Yeah.

20 A. He was here.

21 Q. I know he's here. I'm asking at the time when
22 you were working in Syracuse did you meet him?

23 A. In Syracuse, no.

24 Q. No. All right. Dr. Randazzo is writing to Mr.
25 Roumph in February of 2006 and she says, I keep urging

1 the docs to do as much as you can on each patient.

2 You see that?

3 A. Yes.

4 Q. And that's what you -- that's what she was
5 doing, she was talking to you and Dr. Khan and Dr.
6 Bonds -- actually Dr. Bonds hadn't quite started
7 yet -- Dr. Khan and you and perhaps somebody else to
8 do as much as you could on each patient, correct?

9 A. Yes. This is called --

10 Q. The same message she had given you in the
11 performance review just a couple of months earlier do
12 as many -- more procedures on each patient, right?

13 A. I can explain this if you want me to? You're
14 referring to PPP, per patient production.

15 Q. I'm not referring to anything. I'm asking you
16 a question. Was she telling you and the other docs to
17 do as much as you could on each patient?

18 A. If it's for the betterment of the patient. If
19 the patient you can produce more or revenue if your
20 intentions are good.

21 Q. Were your intentions good before you got this
22 instruction to do more on each patient?

23 MR. STEVENS: Objection to the form.

24 A. My intentions are always good.

25 Q. Right. You didn't need instruction to have

1 good intentions, did you?

2 A. I never asked them to give me instructions.

3 Q. Okay. Well, after this period of time when Dr.
4 Randazzo was giving you the message to do more, as
5 much as you could on each patient, that was a
6 transition time where Dr. Khan was beginning to take
7 over as the lead, right about March or so of 2006;
8 right?

9 A. Yes.

10 MR. STEVENS: Objection to four different
11 questions in one.

12 THE COURT: Overruled.

13 Q. In March of 2006, did Dr. Khan become the lead
14 dentist in Syracuse?

15 A. That's true.

16 Q. And he remained the lead until 2010 about the
17 same time you left; is that right?

18 A. That's true.

19 Q. You knew that FORBA was tracking your
20 production numbers at that time; is that right?

21 A. Yes.

22 Q. And one of the things they were reviewing was
23 the amount that you were generating per patient; is
24 that right?

25 A. Yes.

1 Q. You knew that that evaluation was being done
2 monthly or even more frequently than that, true?

3 A. Monthly, yeah.

4 Q. Or maybe more often, right?

5 A. Maybe.

6 Q. Okay. And Dr. Khan talked to you about your
7 production, didn't he?

8 A. Yes.

9 Q. You and he had discussions about your PPP, at
10 least once a month; is that right?

11 A. Yes.

12 Q. He showed you these production reports?

13 A. Yes.

14 Q. And those were the same reports that Dr.
15 Randazzo had showed you, right?

16 A. Monthly, yes.

17 Q. And Dr. Khan met with you and the other
18 dentists to go over your production numbers, correct?

19 A. They would show it to us.

20 Q. I'm sorry, what?

21 A. They would show to us, yes.

22 THE COURT: It was showed to us?

23 THE WITNESS: They were showed to us, yes.

24 Q. And you and Dr. Khan and the other dentists
25 discussed how much money each of you was generating

1 for the clinic, correct?

2 A. Yes. Numbers were there, yes.

3 Q. You weren't talking about quality of care, you
4 weren't talking about good intentions, you were
5 talking about dollars; is that true?

6 A. No, that's not true. In the monthly meetings
7 we would talk a lot. Talk a lot more. It was not
8 about the numbers. We talk about how we make any
9 difference in people's life in this whole month. How
10 much did we do good for the patients. It was not only
11 about the numbers. I mean numbers is just one small
12 thing.

13 Q. Okay.

14 A. I mean showing the numbers to me would make no
15 difference in my productivity.

16 Q. Did you like your job?

17 A. I like my job now also.

18 Q. I'm asking about at the time when you were at
19 Small Smiles?

20 A. Yes.

21 Q. You were just right out of dental school,
22 right?

23 A. Well, I was a dentist from --

24 Q. Out of the -- you just got your license in the
25 United States?

1 A. Yes.

2 Q. And you wanted a job, correct?

3 A. Yes.

4 Q. And so you wanted to keep that job, didn't you?

5 A. I could go to any other job.

6 Q. Pardon?

7 A. I could go to any other job. I don't have to
8 be here in this job.

9 Q. All right. You stayed there for five years,
10 right?

11 A. Yes. But nobody bounded me. Nobody --

12 Q. And you knew that if your numbers went down too
13 low they would get rid of you, correct?

14 A. That's fine. I can go to any other job.

15 Q. Did you know that? Did you know that at Small
16 Smiles if your numbers went down you're out?

17 A. If you don't work, if you don't work for any
18 job. If you don't work and you -- you're not
19 productive, you have to be out.

20 Q. Yes.

21 A. It's for any job.

22 Q. But if you're in a healthcare world you can
23 only do what the patient needs, right, you can't start
24 because you need to get your numbers up do things that
25 the patient doesn't need, right?

1 A. I agree with you.

2 Q. So if it happens that the patients that come to
3 you need no dental work, and instead you do pulps and
4 crowns on them and generate \$1,000, your production
5 looks pretty good, right? But you work just as hard
6 if you spent the time with them and evaluated things
7 and told them you're doing great, you don't need any
8 care, you don't need any treatment?

9 MR. STEVENS: Objection. This is a
10 speech. A summation, not a question.

11 THE COURT: Okay. Again --

12 MR. McPHILLIAMY: Objection to form.

13 THE COURT: Objections to the form of the
14 question.

15 MR. STEVENS: Form. Thank you.

16 THE COURT: Okay. I'm going to sustain
17 it. It was multiple questions. Please no
18 speaking objections.

19 MR. STEVENS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 BY MR. FRANKEL: (Cont.)

22 Q. If your patient's needs are such that you don't
23 generate a lot of money for the clinic, because
24 fortunately they don't need the -- a lot of treatment,
25 you're doing a good job as the dentist and working

1 hard and talking to them?

2 MR. STEVENS: Objection. Form.

3 Q. Under those circumstances --

4 THE COURT: Yeah. Why don't you shorten
5 it.

6 MR. FRANKEL: Okay.

7 Q. As a dentist are you suppose to treat patients
8 that come to you based on their needs?

9 A. That's true.

10 Q. Not the financial interest of yourself or your
11 employer?

12 A. I agree with you.

13 Q. And so if you need to be doing as much as you
14 can on each patient that depends on what the patient's
15 needs are, correct?

16 A. That's true.

17 Q. You can't just go do more procedures on each
18 patient because the budget numbers are down, right?

19 A. That's right.

20 Q. That would be malpractice, right?

21 A. Yes.

22 Q. It would be fraud?

23 A. If you do unnecessary work which is not needed
24 that's wrong.

25 Q. Be deceptive?

1 MR. McPHILLIAMY: Objection. Form.

2 THE COURT: Overruled.

3 A. Deceptive, yes.

4 MR. FRANKEL: Can we see Exhibit 101-F,
5 please. Actually, I'm sorry, let's go to Exhibit
6 5.

7 MR. DORR: Five?

8 MR. FRANKEL: Yes.

9 Q. You knew, Dr. Aman, that --

10 MR. McPHILLIAMY: Objection. Not in
11 evidence.

12 MR. FRANKEL: It's not? Put it down.

13 Q. Dr. Aman --

14 MR. FRANKEL: Let's go to 101 now.

15 Q. These meetings that you had with Dr. Khan and
16 the others you did talk about production numbers and
17 dollars, correct?

18 A. Talk about production, yes.

19 Q. And how much each of the dentists was making
20 for the clinic, right?

21 A. They showed the numbers, yes.

22 Q. And if a dentist was underperforming
23 financially, you heard Dr. Khan tell them that's not
24 acceptable, correct?

25 A. If they're not working, if they're not working

1 on patients they're not putting all efforts then...

2 Q. How can you tell by just the bottom line number
3 how hard they are working?

4 A. If one doctor has seen so many patients, the
5 other is just sitting in the corners and doing
6 nothing, you know, they are not putting all their
7 weights.

8 Q. That wouldn't be measured by dollars. You
9 would be able to say, I saw doctor such and such who
10 came in every day an hour late or came to stayed
11 longer for lunch or was in his -- in looking at the
12 computer, right?

13 MR. McPHILLIAMY: Objection. Form.

14 MR. STEVENS: Form.

15 THE COURT: Overruled.

16 A. I think if they -- they're not -- they're
17 coming late or they're not watching so many patients
18 and just sitting around, and if one is seeing more
19 patients than the other that's really unfair. It's
20 not -- you know, he's not really working.

21 Q. I understand. But if the measuring stick is
22 how much money, not how many patients, not whether
23 you're late to work or not, but the measuring stick
24 was how much per day you were generating for the
25 clinic, right?

1 A. That was one of the numbers, yes.

2 Q. Well, do you recall, Dr. Aman, having a meeting
3 in the end of May of 2006 with you and the other
4 doctors, and he went over how much each of you was
5 making for the clinic on a daily basis?

6 A. I don't recall that, but it's written there.

7 Q. Okay. You had -- this was not the only time --
8 do you recall having meetings like that?

9 A. Monthly.

10 Q. Yes. And you remember Dr. Filostrat was
11 working along with you and Dr. Bonds and Dr. Khan at
12 the clinic in 2006, right?

13 A. Yes.

14 Q. You and Dr. Bonds were in the middle, you were
15 making \$3,400 is that a day or the clinic?

16 A. Doesn't say.

17 Q. It says Dr. Dimitri has made 1,591 in a day,
18 when Dr. Naveed and Dr. Koury have made approximately
19 3,400 each?

20 A. Yes, looks like.

21 Q. So you and Dr. Bonds were generating 3,400 a
22 day for the clinic, and Dr. Khan was 4,250, and Dr.
23 Filostrat was only 1,591; is that right?

24 A. That's right.

25 Q. Do you remember Dr. Khan telling him that was

1 not acceptable? That 1,591 was not acceptable?

2 A. Nothing to do with the numbers. It's --

3 Q. Do you remember him saying that?

4 A. He was here.

5 Q. Do you remember in -- in 2006 Dr. Khan telling
6 Dr. Filostrat your production is unacceptable to us?

7 A. I don't remember at that time but...

8 Q. All right. Dr. Aman, one of the issues that
9 FORBA had with your work was that you were very slow;
10 is that right?

11 A. I was good. I was hard working.

12 Q. I know you were hard working. They acknowledge
13 that, but you were in their mind very slow; is that
14 right?

15 A. Slow in talking to the patients a lot.
16 Explaining to them a lot in that way.

17 Q. Yeah. You were taking the time to talk to the
18 patients, explain things to the patients, and FORBA
19 wasn't happy about that, they thought that you were
20 wasting time, correct?

21 A. No, that's not true.

22 Q. All right.

23 MR. FRANKEL: Let me offer into evidence
24 at this time, Your Honor, Plaintiff's Exhibit 5.

25 THE COURT: Any objection?

1 MR. FIRST: I object to it.

2 THE COURT: Okay. Legal basis?

3 MR. FIRST: It's hearsay. And it's
4 irrelevant and immaterial.

5 THE COURT: Mr. Stevens?

6 MR. STEVENS: Just it doesn't -- it
7 doesn't go to the witness.

8 THE COURT: No speeches. What is your
9 legal objection?

10 MR. STEVENS: Only relevance to this
11 witness.

12 MR. McPHILLIAMY: Objection. Relevancy.

13 THE COURT: Overruled. Exhibit 5 is
14 received.

15 BY MR. FRANKEL: (Cont.)

16 Q. Dr. Aman, look at that second part of this
17 e-mail. Second part of it, the chain, the one from
18 Mr. Roumph to Nadine Vandewalker, who was the office
19 manager at the time?

20 A. Yes.

21 Q. And copies of this went to senior management
22 Dan DeRose, for example, and Rich Lane, right --

23 A. That's right.

24 Q. -- and others? And the subject is Syracuse
25 production update. E-mail's from Mr. Roumph to Miss

1 Vandewalker beginning saying, please review this with
2 Dr. Khan. Right, that's Dr. Yaqoob?

3 A. Sure.

4 Q. I want to -- let's look down at the -- you see
5 they are talking about how you finished February under
6 budget and March budget is actually higher. So while
7 the numbers are up for March, you're still under
8 budget but better than last month, do you see that?

9 A. That's true.

10 Q. So even though -- you were generating more
11 money for FORBA. They weren't happy because even
12 though your numbers were higher, you were still under
13 budget, correct?

14 A. That's right.

15 Q. And do you recall being told by Dr. Khan that
16 you are very slow?

17 A. I can see that, yeah.

18 Q. Yes. And you see that and you remember that
19 topic coming up, correct?

20 A. Yes.

21 Q. Because as hardworking as you were, you weren't
22 working fast enough; is that right?

23 A. No, it's not true.

24 Q. Well, did you say that -- first of all, Mr.
25 Roumph, do you know whether he's a dentist?

1 A. He's not a dentist.

2 Q. He's not a dentist. Does a nondentist have any
3 business evaluating whether you're working too fast or
4 too slow?

5 A. Just looking at the business part.

6 Q. Pardon. He's just looking at the business
7 side, that's right. And your patients they're the
8 ones who if you were working at a pace that you
9 thought was proper, weren't you?

10 A. I was taking long time in talking to the
11 patients. I mention this in deposition that initially
12 that was my first job, and English is not my first
13 language, so I would take a lot of time and explaining
14 the patient and doing so I was seeing less operative
15 patients, so if you see less operative patients and
16 you talk more or you probably see a little bit more
17 hygiene, so you see your operative work is less.

18 Q. I'm sorry?

19 A. Your operative work if you're talking more to
20 the patients, and maybe going more to the hygiene, you
21 see less operative patients and that was the basic
22 reason.

23 Q. Yes, sir. So even though you're doing a really
24 good job, working hard and talking to patients and
25 helping them out, your production numbers are going

1 down when that happens, right?

2 A. I was -- you know, as I was saying, I was
3 talking, explaining too much to the patients. And
4 once I got better in few months or I was explaining
5 the right way. Just a generalized I would explain a
6 lot, and, you know, I waste a little bit time. So
7 that once I got modified what to do I was able to see
8 more patients. So slow isn't that aspect. My pace
9 was very descent.

10 Q. Let me ask you, did any of the patients
11 complain that you were spending too much time with
12 them?

13 A. I complain.

14 Q. You complain. Because you were hearing it from
15 the upper echelon saying you're too slow and you need
16 to get your production numbers up, right?

17 A. No. I complain myself.

18 Q. All right. How were you going to get -- do
19 more procedures on each patient except to speed up the
20 pace you were working at?

21 A. If you were -- I was talking too much to the
22 patients, when I cut that time and I was able to
23 modify that, I had more time to see more patients.
24 That's all and I increase my production.

25 Q. You decided to spend less time with each

1 patient, that meant you could do more patients and get
2 your production up; is that right?

3 MR. STEVENS: Objection.

4 THE COURT: Overruled.

5 A. No. It's just wasting more time in talking to
6 patient, modifying the language, and be more
7 productive by seeing more patients.

8 Q. Let me ask you this --

9 THE COURT: Wait until the siren goes by.

10 Q. When you worked with children for at least five
11 years while you were at Small Smiles, right?

12 A. That's right.

13 Q. Basically all children, that's the practice was
14 all children, right?

15 A. That's true.

16 Q. Would you agree with me that time is a critical
17 component of good dental care with children?

18 A. Yes.

19 Q. More so than adults because children it's a new
20 experience for them often, right?

21 A. Yes.

22 Q. And they don't have the understanding to
23 appreciate why people are putting things in their
24 mouths and doing things that hurt them, right?

25 A. Yes.

1 Q. And so being a good dentist, treating children
2 necessarily requires spending time with the kids,
3 right?

4 A. Yes.

5 Q. And you don't get revenue, you don't bill for
6 time spent, do you? If you don't do a procedure under
7 the billing rules, you don't get paid, right?

8 MR. McPHILLIAMY: Objection to form.

9 THE COURT: Overruled.

10 A. You spend time, too, for the patient whatever
11 they need. That's not reduced.

12 Q. All right.

13 A. That's not -- that's not interfered in any way,
14 no.

15 Q. But I'm saying if you -- the time you said you
16 were spending talking to the patients about what
17 they -- what their needs were and in working with them
18 that time was nonbillable, right? You didn't get to
19 send in a sheet that said, I spent time with the
20 patient so I get -- I should be paid \$50 or \$100,
21 right?

22 A. What's -- ask your question again?

23 Q. When you spend time with a patient --

24 A. Yes.

25 Q. -- as part of a procedure you don't get paid

1 extra for spending the time, do you?

2 MR. McPHILLIAMY: Objection. Asked and
3 answered.

4 THE COURT: Overruled.

5 A. That time is not changed. I'm not talking
6 about -- you're trying to confuse between these two
7 things. The time with the patient is still the same.

8 Q. You were -- I thought you said you were -- you
9 had decided you needed to move quicker, that you were
10 spending too much time with the patients and you
11 didn't have time to do as many operative procedures;
12 is that right?

13 A. Not with the patients. With the parents
14 outside talking and explaining them what to be done
15 and that part.

16 Q. I see. You cut the parent -- you cut down the
17 time you spent with the parents?

18 A. Well, I modified my language. That's what it
19 is.

20 Q. All right. And did you go then from being very
21 slow to being at least average or above average in how
22 fast you worked?

23 A. I was good.

24 Q. Did the Small Smiles people, Dr. Khan, Mr.
25 Roumph, Mr. DeRose, recognize that you had gone from

1 very slow to doing it -- doing your work faster?

2 A. I don't know.

3 Q. Never told you that?

4 A. I don't know that.

5 Q. Okay. Dr. Aman, is it true that you here in
6 2013 have no memory of any discussions you had with
7 Miss Varano or Jeremy Bohn or anyone else, Mr. Bohn,
8 anyone else associated with the case?

9 A. I don't have any memory.

10 Q. And do you have any memory of the work you did
11 on Jeremy in 2006 and in 2007 other than what's in the
12 dental records?

13 A. That's true.

14 Q. What's true?

15 A. That's true.

16 Q. You do not recall anything?

17 A. I don't recall.

18 Q. If it's not in the records, you don't remember
19 it; is that right?

20 A. I don't recall. I don't have any memory.

21 Q. All right. When you went to Small Smiles you
22 agreed to keep complete and accurate clinical records;
23 is that right?

24 A. That's right.

25 Q. And you did so as far as you remember?

1 A. As far as I remember, yes.

2 Q. Okay. The facts that were important in any
3 diagnose you made on a patient should be written down
4 in the record, right?

5 A. That's right.

6 Q. And facts that are important in any treatment
7 you did on Jeremy Bohn should be in his record written
8 down, right?

9 A. That's right.

10 Q. And if it's important it should be in the
11 record, correct?

12 A. Yes.

13 Q. As far as you know it is?

14 A. We attempt to write -- we attempt to write most
15 of the things, but we cannot write everything.

16 Q. No. The important things are in the record,
17 right?

18 A. Yes.

19 Q. All right. Some questions now about the
20 treatment of Jeremy. Do you recall first seeing
21 Jeremy in August of 2006?

22 A. Yes.

23 Q. In preparation for your testimony I take you
24 have had a chance to review the chart?

25 A. Yes.

1 Q. You reviewed your deposition?

2 A. Yes.

3 Q. All right. So you saw him on around August
4 31st, 2006, for the first time, right?

5 A. Yes.

6 Q. Did you know that he had already been seen once
7 before at Small Smiles a few months earlier?

8 A. Yes.

9 Q. But you weren't his dentist then, right?

10 A. That's right.

11 Q. When Jeremy came in that day, did he have what
12 you'd call a definite negative behavior on a behavior
13 rating scale?

14 A. Can you say that again, sir.

15 Q. Yes, sir. Do you remember when a child came to
16 Small Smiles was one of the things that you did
17 initially was evaluate on a four-point rating scale
18 what their behavior was at that time?

19 A. That's right.

20 Q. And one was the most negative behavior and four
21 was the best behavior, right?

22 A. That's right.

23 Q. And Jeremy came in with a one, do you remember
24 that?

25 A. Yes.

1 Q. And you were his dentist and you decided that
2 you thought you could treat him using nitrous oxide;
3 is that right?

4 A. That's right.

5 Q. And did you?

6 A. Yes.

7 Q. And although he was a one, were you able to
8 treat him without a papoose board?

9 A. Yes. I did make the parents sign for papoose
10 board and -- because -- because he was on scale one,
11 and I thought that he -- we might use that. That's
12 why we -- that's why I signed that -- parents sign the
13 papoose board that I might need papoose board.

14 Q. But you didn't?

15 A. I did not.

16 Q. You gave him nitrous oxide and were able to
17 treat him, extensive treatment with just using nitrous
18 oxide, right?

19 A. That's right.

20 Q. Uhm, did Dr. Bonds ever ask you either in May
21 or October if you could treat Jeremy Bohn because he
22 couldn't manage him without a papoose board?

23 A. Say it again, sir.

24 Q. Let's take it one at a time. Jeremy came into
25 Small Smiles in May of 2006. Did Dr. Bonds ever --

1 you were there at that time, right, May of 2006?

2 A. Yes.

3 Q. Did Dr. Bonds ever say to you, Dr. Aman, I have
4 a patient, young child, who is first timer here, who
5 is very unhappy and scared, and I think I'm going to
6 have to put him in a papoose board, do you think you
7 can take a look at him and see if you can treat him
8 without that?

9 A. I wouldn't recall.

10 Q. Okay. If something like that happened, would
11 you expect it to be in the dental records? One
12 dentist asks another for help?

13 A. No. We don't write that.

14 Q. You don't write that. Okay. And you don't
15 have any recollection of that happening?

16 A. No.

17 Q. Then fast forward to October of 2006. You had
18 already seen Jeremy without a papoose board. Dr.
19 Bonds had used the board twice on him. Did Dr. Bonds
20 on this visit in October do you remember him ever
21 coming to you and saying Dr. Aman, do you think you
22 can help with Jeremy, you did it once before, I'm
23 afraid I'm going to have to use a papoose board?

24 A. I don't recall.

25 Q. Tell me something, Dr. Aman, weren't you afraid

1 with this child with a one that if you didn't put him
2 in a papoose board he might hit you or do something
3 that would endanger him or you?

4 A. Say it again, sir.

5 Q. When you used nitrous oxide on Jeremy --

6 A. Yes.

7 Q. -- and were able to do the work that you did in
8 August of 2006 --

9 A. Yes.

10 Q. -- weren't you afraid that if you didn't put
11 him in a papoose board he might move his arms or do
12 things that would endanger you or him?

13 A. I give both the options nitrous and papoose
14 board. I made mom sign papoose board. But I was able
15 to do work in nitrous.

16 Q. I know, sir. You did not have any fear that
17 without a papoose board you were going to be in
18 danger, were you, did you?

19 A. Without the papoose board, no.

20 Q. Right?

21 A. No.

22 Q. And you weren't worried this was for Jeremy's
23 safety that if you didn't put him in a papoose board
24 because he had a one on his rating scale, he was going
25 to endanger himself, you didn't think that was the

1 case, did you?

2 A. No.

3 Q. If you did, you would have considered other
4 treatment. But did you say that you gave Miss Varano
5 the option of nitrous or papoose board?

6 A. We give all the options, yes.

7 Q. That's the duty of the dentist, isn't it?

8 A. Yes.

9 Q. If you're going to consider papoozing a child,
10 you have to tell the parents what other options they
11 have, right?

12 A. Yes.

13 Q. And the papoose is the last option, isn't it?

14 A. That's right. In this office, yes.

15 Q. At Small Smiles?

16 A. Yes.

17 Q. Suppose to be after everything else had been
18 tried and failed, right?

19 A. That's right.

20 MR. FRANKEL: Uhm, did I give you the
21 dental chart?

22 MR. STEVENS: No.

23 THE COURT: How about we -- I think it is
24 quarter of eleven. Why don't we take our morning
25 recess. Fifteen minutes.

1 (Proceedings in recess at 10:40 a.m..)

2 MR. HULSLANDER: May we approach for a
3 second, Judge.

4 THE COURT: Sure.

5 (A discussion off the record at the Bench, all
6 counsel present.)

7 THE COURT: We're ready.

8 (Jury seated in the jury box at 11:05 a.m..)

9 THE COURT: Welcome back. Ready?

10 MR. FRANKEL: Yes.

11 BY MR. FRANKEL: (Cont.)

12 Q. Dr. Aman, you now have the copy of the chart in
13 front of you; is that right?

14 A. That's right.

15 Q. You should feel free to look at it at any time
16 if it would help answer any of my questions. Okay?

17 A. Okay.

18 Q. When we broke, we were talking a little bit
19 about nitrous oxide?

20 A. Yes.

21 Q. Did you -- when you give a child nitrous oxide,
22 do you need to get consent from the child's parent
23 before you do that?

24 A. Yes. We always tell the parent what for the
25 nitrous, yes.

1 Q. Do you present them with a consent form, the
2 written form that explains the risk and has a place
3 for them to sign?

4 A. Yes. That's in the first paper. Treatment
5 plan, yes.

6 Q. Okay. Can you -- you've got the chart before
7 you. Did you get a consent form from Miss Varano or
8 Jeremy's dad to give nitrous to Jeremy when you
9 treated him in August of 2006?

10 A. We tell them verbally. We tell the consent we
11 are going to use it and it's in the treatment plan the
12 first time they're being -- they're being told about
13 these are the procedures, we could use nitrous, we
14 could use papoose, and they have already sign it
15 before so they been aware of it from before.

16 Q. Okay. Am I understanding you to say you didn't
17 actually discuss and present a consent form to Miss
18 Varano when you treated Jeremy, you were relying on
19 something that had been signed months earlier?

20 A. No. That's not true.

21 MR. STEVENS: Form.

22 THE COURT: Overruled.

23 A. That's not true. That's not true. We always
24 tell the patient -- the parent/guardian that this is
25 what I think I'm going to do. This is the option. So

1 we always tell for the nitrous, that's right.

2 Q. So can you point out for me and for the ladies
3 and gentlemen of the jury where in the chart you had
4 Miss Varano acknowledge that you were going to give
5 nitrous and it was okay with her?

6 A. It's not written in my treatment plan, no.

7 Q. Your treatment plan?

8 A. My --

9 Q. You don't have a treatment plan, do you, sir?

10 A. This operative sheet.

11 Q. Operative sheet. Okay?

12 A. Yes, sir.

13 Q. There's -- there was a consent form that Dr.
14 Bonds presented for nitrous back in May?

15 A. Right.

16 Q. Miss Varano signed it, the same form has
17 nitrous and local anesthetic on the same form as part
18 of Exhibit 199, right?

19 A. Yup. But we don't sign every -- every month
20 they come. Like if he's coming like after this there
21 were some fillings done, after a month apart we don't
22 keep on signing nitrous, papoose, nitrous, papoose.
23 Once it is signed six months -- within six months
24 that's enough. We just have to tell verbally that
25 this is what we think we can use this procedure, this

1 plan, and we don't have to make sign every time. We
2 don't do that.

3 Q. Okay. So you're saying that when Miss Varano
4 signed approving nitrous oxide as a possible treatment
5 in May that you considered that her consent to do it
6 for the next six months; is that right?

7 A. No. What I'm saying is we don't write the
8 paper again, but we have to tell verbally that this is
9 what we do -- do consent. We do get the informed
10 consent, but we don't sign the paper again and again.
11 We don't do that. Within six months, no.

12 Q. Okay. I did notice there were a number of
13 consent forms signed in the chart. Are you saying
14 they're only good for six months?

15 A. The lidocaine and nitrous?

16 Q. Yes.

17 A. We don't get the consent within six months, no.

18 Q. Okay.

19 A. We don't make them sign again.

20 Q. Okay. The communications you say you had with
21 Miss Varano there's no note as to substance of what
22 you talked about, is there?

23 A. What substance?

24 Q. The discussion you said in your deposition that
25 you talked to Miss Varano before you did the

1 procedures on Jeremy in August of 2006, right?

2 A. It's what I always do.

3 Q. You don't have memory of it though, right?

4 A. I don't have any memory.

5 Q. And the only note that you have is an
6 abbreviation that you say stands for that you received
7 informed -- RICG; is that right?

8 A. That's right. Received informed consent of the
9 guardian, yes.

10 Q. That's the total of the evidence that you
11 actually got consent for what you did on Jeremy in
12 August of 2006?

13 A. What's written in the chart.

14 Q. All right. When you saw Jeremy on August 31st,
15 2006, there was a treatment plan in place, right?

16 A. That's right.

17 MR. FRANKEL: Could we see that, Mr. Dorr.

18 Q. Was this the treatment plan that was in the
19 chart when Jeremy came to the Small Smiles clinic in
20 August of 2006?

21 A. That's right.

22 Q. Doctor, when you have a treatment plan like
23 this which has so many -- so many teeth, is there an
24 order to the work that needs to be done that's on the
25 treatment plan?

1 A. There's no order. But if there is more -- if
2 there's some teeth which needs somewhere immediate
3 treatment plan, I pick up that, those teeth.

4 Q. Okay. Well, there had been three plus months
5 since Jeremy had been to the Small Smiles clinic?

6 A. That's right.

7 Q. And there were nine teeth still left to work
8 on, right?

9 A. That's right.

10 Q. So how did you decide which ones you were going
11 to do?

12 A. I look at the which is -- which patient needs
13 immediate work. Which is more -- which teeth if I
14 don't take care would result in to more problem in the
15 future. So I pick up those teeth. This is my -- this
16 is what I practice. I pick up those teeth which need
17 more attention.

18 Q. Did Dr. Bonds as far as you could tell he's the
19 one that wrote the treatment plan, right?

20 A. That's right.

21 Q. Did he prioritize the teeth so that whoever did
22 the next -- who was responsible for the next visit
23 would know, okay, the next one will be these teeth?

24 A. No. Every dentist makes his own decision.

25 Q. Okay. So when you walked in --

1 MR. STEVENS: I'm sorry, may he finish
2 without being interrupted.

3 THE COURT: I think he answered the
4 question.

5 Q. When Jeremy walked in and you saw him, it was
6 like he was a new patient, right? You were evaluating
7 his situation?

8 A. That's right.

9 Q. And first thing you did was order some x-rays,
10 right?

11 A. That's right.

12 Q. The x-rays showed the condition of many of
13 Jeremy's teeth, right?

14 A. Yes.

15 Q. You didn't think there was a need to obtain new
16 x-rays, the x-ray you got on August 31st was okay with
17 you, right?

18 A. That was the best we could get.

19 Q. I'm sorry. Did you think that you needed any
20 additional x-rays in order to decide what treatment to
21 provide Jeremy Bohn on August 31st, 2006?

22 A. That was the best x-ray we got so we had to go
23 with that.

24 Q. It's not my question, sir. I'm asking you did
25 you think that you had all the information you needed

1 on the x-ray in order to decide what treatment to
2 provide Jeremy Bohn?

3 MR. STEVENS: Form.

4 THE COURT: Overruled.

5 A. X-ray doesn't tell all the situation.

6 THE COURT: Doctor, can you answer that
7 question?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Repeat the question.

10 MR. FRANKEL: Would you read it back.

11 (Pending Question read by the Reporter.)

12 THE WITNESS: With that x-ray which I got
13 it had this -- the best x-ray we got and it had
14 the information, yes.

15 Q. You did not have to retake it, correct?

16 A. This is the best we got. I don't push kids
17 again and again for x-rays if they cannot tolerate.

18 Q. Excuse me, Doctor. Did -- were you asked at
19 page 396 of your deposition, line 4, would you take a
20 look at that.

21 A. Page?

22 Q. 396. Line four, Mr. Leyendecker asked you if
23 there was a problem with -- Mr. Leyendecker asked you
24 at line four, yeah, if there is a problem with this
25 one, you were able to obtain four, why didn't you

1 obtain one that was more diagnostic? Your answer was,
2 I think it was okay and I didn't have to use it. I
3 didn't have to retake it. Did you testify -- did Mr.
4 Leyendecker ask those questions and did you give those
5 answers, Dr. Aman?

6 A. That's right.

7 Q. Did I read it correctly?

8 A. That's right.

9 Q. All right.

10 MR. STEVENS: Objection, Your Honor. In
11 fairness, may I read the next question and answer?
12 May we approach?

13 THE COURT: It's impeachment. No.

14 Q. Before you treated Jeremy on August 31st, you
15 also -- did you examine him?

16 A. That's right, I did examine him.

17 Q. And based on the x-rays that you had and the
18 clinical exam you did, you'd concluded Jeremy needed
19 four pulpotomies and four stainless steel crowns,
20 correct?

21 A. I concluded that he need crowns, but I was not
22 sure about pulpotomies.

23 Q. Sure about that?

24 A. I'm sure.

25 MR. McPHILLIAMY: Objection.

1 Q. Did you, Dr. Aman, do you remember signing an
2 affidavit in this case?

3 A. That's right.

4 Q. Just the end of May of this year, correct?

5 A. That's right.

6 Q. And you swore to the answers in that affidavit?

7 A. That's right.

8 Q. And you took that oath very seriously, correct?

9 A. Yes.

10 Q. Did you carefully read the affidavit before you
11 signed it?

12 A. Sure. Show it to me which one it is.

13 Q. Do I need to mark --

14 MR. FRANKEL: Let me mark this as an
15 exhibit just because for identification purposes.

16 (Plaintiff's Exhibit No. 780 marked for
17 identification.)

18 Q. Dr. Aman, here. Dr. Aman, I'm handing you
19 what's been marked as Plaintiff's Exhibit 780. Do you
20 recognize that as a copy of the affidavit you signed
21 on May 31st, 2013?

22 A. Yes.

23 Q. Is that your signature at the end?

24 A. Yes.

25 Q. And a notary signature to show it was under

1 oath?

2 A. Yes.

3 Q. Look at paragraph eleven, Dr. Aman, see if this
4 refreshes your memory as to what you swore to in May.
5 You say, I initially saw Jeremy Bohn on August 31st,
6 2006. At that time, I reviewed the prior treatment
7 plan and x-rays created on May 23, 2006, as well as
8 the dental work we previously completed. I read that
9 correctly?

10 A. Yes.

11 Q. Then you said, I examined Jeremy Bohn's teeth
12 and had two periapical and two bite wing x-rays taken
13 of his teeth, right?

14 A. That's right.

15 Q. Then you say the x-rays and my clinical
16 examination revealed that the decay on teeth D, E, F
17 and G had worsened and that fillings were no longer
18 advisable. Right?

19 A. That's right.

20 Q. Then you say, based on the decay which was
21 confirmed by the x-rays, my clinical examination as
22 well as my education, training and experience I used
23 my professional judgment to determine that pulpotomies
24 and crowns were now necessary and proper for all four
25 teeth to properly restore Jeremy Bohn's dental health.

1 Do you remember, Dr. Aman, swearing that you decided
2 based on your clinical exam and x-rays that Jeremy
3 needed pulpotomies and crowns and then you began doing
4 your work?

5 A. There's no way you can tell before that these
6 teeth need pulpotomy or not. First you have to take
7 the decay out and then you can find out if you can do
8 the pulpotomy.

9 Q. Were you telling the truth when you signed this
10 affidavit?

11 A. It doesn't say that just based on the decay
12 which was confirmed by the x-ray, my education,
13 training --

14 THE COURT: You are saying something. The
15 court reporter needs to -- are you reading it to
16 yourself?

17 THE WITNESS: To myself. Sorry.

18 THE COURT: Okay.

19 A. Say use my professional judgment to determine
20 that pulpotomy and crowns were necessary and proper
21 for all four teeth properly restore Jeremy's Bohn's
22 dental health.

23 Q. Sir --

24 A. I wrote in the deposition, I explained what I
25 -- what -- how I approach this case.

1 Q. I understood.

2 A. This is just a vague. This is just a vague
3 type of thing. It doesn't show how I approached this
4 case. You like to read the deposition?

5 Q. This was written after the deposition, wasn't
6 it, Dr. Aman?

7 A. This is a vague. It doesn't tell -- it doesn't
8 tell how I approached the case.

9 Q. Does it say that based on your clinical
10 examination and the x-rays you determined that Jeremy
11 needed pulps and crowns?

12 A. Yes. I can explain this. Give me a minute.

13 Q. You will have a chance to explain. Let me ask
14 you the next question.

15 A. All right.

16 Q. Did you say the same thing again in paragraph
17 15 of your affidavit? My clinical examination
18 confirmed that performing four pulpotomies and placing
19 four white stainless steel crowns on teeth D, E, F and
20 G were both necessary and proper; right?

21 A. That's right.

22 Q. Your clinical examination of Jeremy?

23 A. Yes.

24 Q. Right?

25 A. The clinical exam doesn't mean that it has to

1 be right in the -- right in the beginning. You're
2 doing examination all throughout and this pulpotomy
3 it's not what you are -- you just trying to play with
4 the words. This is not how we do pulpotomy.

5 Q. These are your words, Dr. Aman, not mine.

6 A. You have to read the deposition how I did it.
7 Read the deposition. This is just your playing with
8 the words, you know.

9 Q. Did you tell the lawyers who wrote this for you
10 that they needed to change it because it was not
11 accurate?

12 MR. McPHILLIAMY: Objection, privileged.

13 A. It is accurate one way of explaining the thing.
14 It's not -- it doesn't really show the real picture of
15 you're trying to display with the words and it's not
16 how we do pulpotomy.

17 Q. Okay. Let's go to subset of this issue, which
18 is the x-rays. All right.

19 A. Okay.

20 Q. Let's focus on your work on Jeremy was on his
21 front -- front teeth D, E, F and G?

22 A. T also later.

23 Q. Later on this date it was D, E, F and G?

24 A. That's right.

25 Q. Focusing on those four front teeth, the x-rays

1 don't show any cavity, do they?

2 A. They do show cavities.

3 Q. Did you testify in your deposition that they
4 didn't? Do you remember that?

5 A. I didn't. They did show cavities.

6 Q. Have you ever testified that they didn't?

7 A. I don't recall.

8 Q. Do you remember saying that you can't -- there
9 aren't any cavities can't --

10 MR. STEVENS: Objection. Page?

11 THE COURT: He's asking a question right
12 now. I don't think he is using the transcript.

13 MR. FRANKEL: Yes.

14 Q. Do you remember telling Mr. Leyendecker that
15 the nose -- Jeremy's nose was interfering and you
16 couldn't see the cavities?

17 A. What I meant to say that you don't see the
18 whole decay because of the nose. Even if the nose was
19 not there and the what were best x-rays there you
20 can't see the whole decay because of the pulp shadow
21 at the back. You cannot see it completely. You can.

22 Q. The x-ray doesn't show the decay, does it?

23 A. It does show the decay, but it doesn't tell the
24 whole picture.

25 Q. Okay. You testified -- did you give these --

1 go to page 392 of your deposition. Actually starting
2 with 391, line 17. Do you remember Mr. Leyendecker
3 was asking you, you had a photograph or a copy of the
4 x-ray, and he wanted you to show him what decay you
5 said you saw in the x-ray. He said what I'd like for
6 you to do is to take that pen and in the same way we
7 been doing it before, I want you to draw as closely as
8 you can around the carious lesions you found or you
9 believe existed on teeth D, E, F, and G. You said you
10 cannot do that because there is a little bit of nose
11 there and it doesn't let you do that. He said what do
12 you mean? And you said this x-ray doesn't really show
13 the cavities as such because of the nose. Do you
14 remember that?

15 A. What it means is --

16 Q. Excuse me, did I -- did Mr. Leyendecker ask
17 those questions and did you give those answers?

18 A. Yes.

19 Q. All right. The x-ray really didn't show the
20 cavities, is that what you said?

21 A. It doesn't show all the cavity. This is what
22 I'm trying to say. It shows some cavity. Because of
23 the nose and the shadow, you don't see the whole
24 cavity.

25 Q. You said the x-rays don't show the cavities,

1 right?

2 A. What I need to say all the cavity. You see
3 some cavity he made me draw the cavity, too. If
4 you -- but you don't see the whole cavity because of
5 the shadow of the pulp with the pulp and the nose.

6 Q. So then saying you couldn't see the cavities,
7 then you said you could see the cavities, right?

8 A. You don't see all the cavity. That's what I'm
9 trying to say.

10 Q. And you -- Mr. Leyendecker gave you the pen and
11 you drew where you thought you saw the cavities,
12 correct?

13 A. Just a ballpark. I mean you couldn't really.
14 I told him that's just a -- I mean I can't know
15 exactly where it is. It's just the -- what's the word
16 -- imaginary thing.

17 Q. Imaginary. Okay. Are those your --

18 MR. STEVENS: Can we approach?

19 THE COURT: Can you approach.

20 (A discussion off the record at the Bench, all
21 counsel present.)

22 MR. STEVENS: Just so it's on the record,
23 objection, Your Honor.

24 THE COURT: Okay. Objection is this
25 exhibit in evidence?

1 MR. FRANKEL: I'm just about to get that
2 in evidence, Your Honor.

3 THE COURT: Let's take it out until it is.

4 BY MR. FRANKEL: (Cont.)

5 Q. Dr. Aman, let me show you what's been marked as
6 Plaintiff's Exhibit 203. Can you confirm for us that
7 those are x-rays and blowups of x-rays that are of
8 Jeremy Bohn that you used in treating him?

9 A. That's right.

10 MR. FRANKEL: We move to introduce Exhibit
11 203.

12 THE COURT: Any objection?

13 MR. STEVENS: Objection.

14 THE COURT: What was that? Did you say
15 objection?

16 MR. STEVENS: Objection.

17 THE COURT: And based on the grounds of
18 the motion in limine?

19 MR. STEVENS: Yes. And the grounds stated
20 at the Bench, Your Honor.

21 THE COURT: Okay. All right. Overruled.
22 Exhibit 203 received.

23 BY MR. FRANKEL: (Cont.)

24 Q. So are these markings, Dr. Aman, markings you
25 made on the x-ray to reflect the areas of the teeth

1 that you say were decayed?

2 A. I'm not positive. But just some shadow.

3 Q. I'm sorry?

4 A. It's just -- it doesn't show the whole extent.
5 Just the imaginary shadows there, yes.

6 Q. Well, when you gave your deposition that's when
7 you made these marks, correct?

8 A. That's right.

9 Q. And at the deposition, you had the original
10 chart and x-rays with you, right?

11 A. Yes.

12 Q. And to the extent that you needed to look at
13 those, Mr. Leyendecker encouraged you to do so,
14 correct?

15 A. That's right.

16 Q. And so when you identified what part of each of
17 these teeth you thought was -- had caries, you did
18 your best to do so, right?

19 A. That's right.

20 Q. If you thought it was up at the top of the
21 tooth, you would have marked that. If you thought it
22 was on the left side, you would have marked that, and
23 the third page of Exhibit 203 reflects your views and
24 your analysis of where the decay is on that x-ray,
25 right?

1 A. Yes. Roughly.

2 Q. Okay. The original x-ray's in that box there,
3 Dr. Aman, the Federal Express box, in case you need to
4 look at it. Let me ask you this, are you swearing
5 under oath that the x-ray --

6 THE COURT: Wait. Wait. We have another
7 siren.

8 Q. That the x-ray that is shown as part of Exhibit
9 203 shows caries --

10 MR. McPHILLIAMY: Objection, Your Honor.
11 May we approach?

12 THE COURT: Yes.

13 (A discussion off the record at the Bench, all
14 counsel present.)

15 THE COURT: Did you finish your question?

16 MR. FRANKEL: I don't believe I did.

17 Q. Is it your testimony before the ladies and
18 gentlemen of the jury, Dr. Aman, that tooth -- you
19 were here and you heard Dr. Slack testify with -- look
20 at those x-rays and looking at the original x-ray that
21 she did not believe there were any caries on tooth D,
22 E, F and G, correct?

23 A. That's right.

24 Q. Is it your testimony that there are -- there is
25 disease on D, E, F and G?

1 A. That's right.

2 Q. In the areas that you marked as part of Exhibit
3 203, right?

4 A. It's a rough estimate. It's a rough estimate.
5 Maybe it's little bit less, bigger, I don't know.

6 Q. But if we're trying to know where you say the
7 caries are, they are where those lines are on 203?

8 A. Those are the dark areas I see on the teeth.

9 Q. Did that reflect your thinking when you were
10 treating Jeremy in August 2006?

11 A. No, I had to see the clinical exam. I had to
12 see how much decay is usually clinically.

13 Q. I'm saying the markings he made on Exhibit 203,
14 is that the same analysis that you had when you were
15 actually treating him?

16 A. No. This one is -- this is only one exam.
17 This x-ray doesn't really -- will not show me the
18 extent how much it is. It doesn't show the whole
19 picture of decay. The clinical exam together with the
20 x-ray can show better because some of the shadows may
21 be it may extend a little bit further. Some may not
22 show. Some may show so I cannot really tell you
23 exactly if this is without seeing the teeth and the
24 x-ray I can exactly mark it where it is.

25 Q. Can't you tell, Dr. Aman, that there is a line

1 of enamel, clean line of enamel on all four of those
2 teeth?

3 A. I won't say clean line. There's enamel.

4 Q. You see any signs down at the bottom of the
5 tooth of any decay?

6 A. There's facial and lingual decay it doesn't
7 show, and there is mesial decay in the tooth number E
8 and F.

9 Q. I tell you what, since you raised it, let's
10 talk about your clinical examination. All right. You
11 said you changed the treatment plan which was
12 originally for a crown on one of those teeth and for
13 fillings on the other three, right?

14 A. That's right.

15 Q. And you did that based on the x-rays which
16 we've looked at and the --

17 A. Clinical exam.

18 Q. -- clinical exam? All right. Are there any
19 notes, any notes, Dr. Aman, that describe what you
20 found clinically with respect to teeth D, E, F and G?

21 A. We don't write separate notes but --

22 Q. Wait. Wait. Wait. You said the clinical exam
23 was a really important part of deciding to do these
24 pulps and crowns, right?

25 A. That's right.

1 Q. And you said if it's important, you got to
2 document it so that everyone knows why you did what
3 you did, right?

4 A. That's right.

5 Q. And in Jeremy's chart, the 50 pages or so that
6 are there, there aren't any clinical notes with
7 respect to D, E, F and G, are there?

8 A. There are. I show you.

9 Q. Are there any notes, Doctor? Describe your
10 clinical findings with regard --

11 THE COURT: Wait. Wait. Wait. He's
12 trying to answer the question from before.

13 MR. FRANKEL: I'm sorry. I didn't realize
14 he didn't answer.

15 A. The diagnosis is carious pulp exposure.

16 Q. I know that's what you -- what you say the
17 diagnosis is. I'm not asking you about the diagnosis.
18 I'm asking you about the clinical exam that you did
19 and what you saw. Is it a fact, Dr. Aman, that there
20 are no notes that describe what you found clinically
21 with respect to D, E, F and G?

22 A. I wrote in the treatment plan, she needs -- he
23 needs crowns and possible pulpotomy.

24 Q. I'm not asking what conclusions you reached.
25 Are there any notes that described what you actually

1 saw, what you found clinically that you say justified
2 the conclusion?

3 A. I would only advise crowns if the carious
4 length has increased and it covers the -- most of the
5 tooth. It was already a crown advised by Dr. Koury
6 and fillings in the front. After three months, poor
7 hygiene before, poor hygiene the next hygiene, the
8 carious extent increased.

9 Q. Did you understand my question?

10 A. I did.

11 Q. What's your answer?

12 A. I didn't write down separate notes, no.

13 Q. There aren't any notes that describe your
14 clinical findings of D, E, F, and G, are there, sir?

15 A. I wrote down carious pulp exposures and crowns.

16 Q. Look on page 390 of your deposition. Do you
17 mind looking at that with me look at line 18. Mr.
18 Leyendecker asked you, are there any notes that
19 describe what you found clinically with respect to D,
20 E, F and G? And what was your answer?

21 A. Page 390.

22 Q. I'm sorry. Page 390. I'm sorry. 390, line
23 18, have you found your place?

24 A. Yes.

25 Q. Let's try it again.

1 A. Yes.

2 Q. The question was are there any notes that
3 describe what you found clinically with respect to D,
4 E, F and G, and what was your answer?

5 A. Carious pulp exposure.

6 Q. Not on my copy. Are we looking at the same
7 thing? Are there any notes that describe what you
8 found clinically with respect to D, E, F and G?

9 A. Here. Okay.

10 Q. And your answer was no, right?

11 A. I didn't write down separately that because
12 there was marked before by Dr. Koury where is the
13 decay is and it's just carious pulp exposure.

14 Q. You didn't write down anything, Doctor, because
15 you didn't do a clinical examination of Jeremy Bohn,
16 did you?

17 A. That's not right.

18 Q. All right. Let's see what your notes say on
19 that.

20 MR. FRANKEL: Can we see -- there we go.

21 Q. This is something you did fill out, isn't it,
22 Doctor?

23 A. That's right.

24 Q. And there's a section here for reviewing the
25 medical history which you did. And then you reviewed

1 the treatment plan and x-rays, right?

2 A. That's right.

3 Q. Right here. What you didn't do according to
4 your own notes is a limited oral exam to confirm the
5 treatment plan and rule out other conditions. You
6 checked no for that, right?

7 A. Limited oral exam is a different thing.
8 Limited oral exam is just for emergency.

9 Q. Well, is there --

10 MR. STEVENS: May the witness finish the
11 answer, please, before he interrupted.

12 MR. FRANKEL: I thought he had answered.

13 Q. Do you have something more to say?

14 A. Yes. Limited oral exam has nothing to do with
15 this thing. It's when somebody comes for emergency
16 and he wants to have a look at one tooth or some
17 problem focus if you read the notes, confirm
18 treatment, plan rule out. Limited oral, limited.
19 Just when the patient tells us that this is a problem,
20 I want to focus on this tooth, you just focus on that
21 tooth.

22 Q. Okay. Well, you said you didn't do a limited
23 oral exam and you don't have any notes of any exam.
24 Are you asking and you don't remember this case?

25 A. Are you saying without any exam I started

1 working without even knowing what's to be done?

2 Q. You had Dr. Bonds' treatment plan and you had
3 some x-rays, right?

4 A. Yes.

5 Q. And you had encouragement from Dr. Randazzo to
6 do more procedures on each patient, right?

7 A. That's not -- that was never even in my mind.

8 Q. It wasn't. Okay.

9 A. It wasn't.

10 Q. With x-rays that you said in your deposition
11 didn't show caries, without any clinical evidence in
12 the record?

13 A. No. I said x-rays showed caries.

14 Q. You started no and you changed to yes?

15 A. Always yes.

16 Q. Okay. Is it your testimony that the ladies and
17 gentlemen of the jury should take your word for it
18 that you actually saw disease that isn't in your
19 records?

20 A. Yes. I put carious pulp exposure and Dr. Koury
21 marked carious before.

22 Q. All right. Let's talk about that note you
23 mentioned.

24 MR. FRANKEL: Go to the treatment plan.

25 Q. Carious pulp exposure is this diagnosis here,

1 CPE; is that right?

2 A. That's right.

3 Q. And that's when you actually during the
4 procedure when you're doing crowns often you find out
5 the decay actually is to the pulp, it might be seen on
6 the x-ray that it's big, but you didn't realize it was
7 to the pulp. When you actually get in there, you
8 realize that it is and you have to do a pulpotomy,
9 right?

10 A. Yes. First you have to --

11 Q. Under the circumstances, you recognize and say
12 CPE, carious pulp exposure, I saw something when I got
13 in there that was worse than what I thought I was
14 going to get into when I started, right?

15 A. First you take out the decay and the decay
16 leads to pulp exposure.

17 Q. Normally you see significant amount of decay on
18 the x-ray?

19 MR. STEVENS: I'm sorry, can we have him
20 not cutoff in mid word, please.

21 THE COURT: Did you have something else
22 you would say, Doctor.

23 THE WITNESS: Go ahead.

24 Q. Normally you can see significant amount of
25 decay on the x-ray, maybe not to the pulp, but turns

1 out it's actually further than you thought, but not
2 clean x-rays and carious pulp exposure, that doesn't
3 happen, does it?

4 MR. STEVENS: Form.

5 THE COURT: Overruled.

6 A. I said before also that carious pulp exposure
7 you can't tell it from the x-ray or by looking. You
8 have to take out the decay which leads to the nerve
9 and then you decide at that time.

10 Q. Did you say to Mr. Leyendecker that you could
11 see the carious pulp exposure on the x-rays on all
12 four teeth?

13 A. I don't recall that.

14 Q. Look at your deposition, Dr. Aman. Page 393,
15 it's at the very bottom there beginning on line 22,
16 Mr. Leyendecker said, he asked you to draw on the
17 lesions the pulp exposure, right, on the x-ray, pulp
18 exposure. You said you can't do that. He said why
19 not? You just told me that the x-rays show exposure
20 to the pulp. Do you remember that?

21 A. Where is it?

22 Q. Okay. Look at page 393, starting at line five.
23 With me? Question, is there anything about this x-ray
24 that shows an exposure of the pulp to these lesions
25 that you identified? Your answer was yes. Then he

1 said on all four or just one of the teeth? You said
2 all four. Right?

3 A. I meant to say carious. You cannot see carious
4 pulp exposure. Because somebody misunderstood, you
5 cannot see carious pulp just from the facial x-rays.

6 Q. Did you say that you can see them not just on
7 one but all four?

8 A. I meant to say all caries.

9 Q. All right. Then he asked you, you just told me
10 that the x-rays show exposure to the pulp and he asked
11 you to show him where, right?

12 A. I'm assuming might have asked me where is the
13 caries.

14 Q. Well, he asked you, just told me the x-ray
15 shows exposure to the pulp, that's a question, line 22
16 on page 393 and you said yes. Then he said, I'm
17 asking you to simply -- this is the pulp right there,
18 so you were pointing to what you thought was the pulp
19 exposure, right?

20 A. I was maybe pointing where the pulp is.

21 Q. Okay. And he said then put a tiny P wherever
22 you think these lesions show exposure to the pulp.
23 Can you do that? And you said, no, I can't do that.
24 Right?

25 A. Because you cannot tell where the pulp exposure

1 is from the x-ray. This is what I'm trying to tell
2 you.

3 Q. Even though you said you could see them on all
4 four?

5 A. There's a little bit of confusion here. But
6 you cannot -- I mean this is something we learn. You
7 cannot see carious pulp exposure on the facial by the
8 x-ray. That's universal.

9 Q. All right. That's not what you said in your
10 deposition, though, right?

11 A. I must have little bit of confusion here.

12 Q. Okay. And did you miss the confusion when you
13 read it and made changes of one and two words on other
14 things but didn't make any changes to that?

15 A. I must have missed it.

16 Q. Okay. One last thing before we go to the next
17 subject, Dr. Aman. CPE. Is carious pulp exposure a
18 basis for doing a crown?

19 A. Yes.

20 Q. Yes? What was the procedure you were going in
21 to do?

22 A. I was going to do the crown. The crown.

23 Q. Okay. So the carious pulp exposure is not a
24 diagnosis for a crown, is it?

25 A. Carious pulp exposure is the carious pulp

1 exposure.

2 Q. And you use that code CPE for all the
3 procedures, didn't you?

4 A. Because it went through that route.

5 Q. It's not the diagnosis -- that's not the basis
6 for doing a crown, is it?

7 A. This is the basis of this crown.

8 Q. Okay. Now, let's move to the just for a little
9 bit to the treatment plan and your notes on this
10 treatment plan. This is a treatment plan that Dr.
11 Bonds prepared the first day Jeremy was at Small
12 Smiles; is that right?

13 A. That's right.

14 Q. Except for four notations that weren't on the
15 plan, right?

16 A. That's right.

17 Q. Dr. Bonds had told Miss Varano that Jeremy
18 needed a New Smile in D, and fillings in the rest of
19 these teeth, other than the two that were being
20 treated that day, right?

21 A. That's right.

22 Q. So looking specifically at D, E, F and G, Dr.
23 Bonds said filling -- I'm sorry, New Smile for D,
24 filling for E, filling for F, and filling for G;
25 correct?

1 A. That's right.

2 Q. Fillings get reimbursed in about \$55 a filling;
3 is that right, by Medicaid?

4 A. I'm sure. I don't recall.

5 Q. Well, you know what, since there has been some
6 issue about this, let's try to verify that. Would you
7 look at the back of 199. See if I can help you. Dr.
8 Aman, can you verify from the billing records in
9 Exhibit 199 that the billing rate for a filling at
10 this time was about \$55 a filling?

11 A. That's right.

12 Q. All right. Uhm, this treatment plan was signed
13 by Miss Varano at the bottom, right?

14 A. That's right.

15 Q. And when she signed it, it didn't have those
16 notations that say NSP, question mark; right?

17 A. That's right.

18 Q. You some months later went into this record and
19 added those notations, didn't you?

20 A. That's not true.

21 Q. Not true?

22 A. That's not true.

23 Q. Look at page 377 of your deposition, Dr. Aman.

24 A. 300?

25 Q. Page 377, line 21. Mr. Leyendecker asking you,

1 because that is your handwriting off to the side,
2 right? That NSP, question mark, you added that after
3 the fact. Did you add that on May 23, 2006, or did
4 you add this when you saw the patient three months
5 later? What was your answer?

6 A. Three months when the patient came back.

7 Q. Yes, sir?

8 A. When the patient came.

9 Q. Three months later, right?

10 A. Yes.

11 Q. Yes?

12 A. When I saw the patient. I added those on the
13 day when I wrote them.

14 Q. I think we might all be in agreement here. You
15 added those notes on a record that showed it was May
16 23, 2006, you added them in August, right?

17 A. That's right.

18 Q. And you did that, Dr. Aman, without
19 initialling, without signing, without any notification
20 or indication that you had done so, right?

21 A. That's right.

22 Q. So that anyone who looked at this record would
23 believe that it was Dr. Bonds when he filled out the
24 treatment plan in May, that it made the notation
25 fillings/NSP, question mark?

1 MR. McPHILLIAMY: Objection.

2 Argumentative.

3 THE COURT: Overruled.

4 A. I did not sign it, but I got the informed
5 consent.

6 Q. Would you agree with me, Doctor, that the
7 effect of what you did was to deceive anybody who was
8 looking at this into believing that Dr. -- it was Dr.
9 Bonds' view when he did the treatment plan that the
10 treatment that was to be considered for D -- for E, F,
11 and G, were fillings or pulps and crowns?

12 MR. McPHILLIAMY: Objection.

13 Argumentative.

14 THE COURT: Overruled.

15 A. It's just honest mistake. I didn't sign it.
16 That's all.

17 Q. You didn't sign it, you didn't date it and
18 there is no record of anything about your examination,
19 is there?

20 A. I didn't sign and date it. It's nothing to do
21 with the treatment plan of Jeremy Bohn. It would
22 still be the same.

23 Q. Well, if Miss Varano signed a treatment plan
24 that called for fillings and you snuck in --

25 MR. STEVENS: Objection.

1 MR. HULSLANDER: Objection, Judge.

2 THE COURT: Rephrase.

3 MR. HULSLANDER: Snuck?

4 THE COURT: Do you have a legal objection,
5 Mr. Hulslander?

6 MR. HULSLANDER: Yeah, that's my legal
7 objection.

8 THE COURT: Form.

9 MR. HULSLANDER: It's not even a form
10 objection.

11 BY MR. FRANKEL: (Cont.)

12 Q. Dr. Aman, if Miss Varano signed a treatment
13 plan that said one thing, and you by changing the
14 chart made it look like she had signed a different
15 treatment plan, would you agree with me that would be
16 deceptive?

17 A. I didn't sign it. That's all. I got the
18 informed consent. That's the important thing. That's
19 it.

20 Q. Well, why not just create your own treatment
21 plan if you were going to change it?

22 A. I just did not do it. I forgot or something.
23 Doesn't happen that way. If you see my other charts,
24 they're really pretty good. But here I don't know. I
25 got her signed the papoose board, but somehow I don't

1 know what was on that day, or I don't recall what the
2 situation was. I wrote down NSP here. Maybe there
3 was a confusion or something. I don't recall now.

4 Q. Yeah. If you really had done an examination
5 and evaluated things and decided that Dr. Bonds was
6 wrong, that really a lot more treatment was necessary,
7 all you had to do was create your own treatment plan
8 that would show that, right?

9 MR. STEVENS: Objection.

10 THE COURT: Overruled.

11 A. This is my treatment plan, but I didn't initial
12 and sign it. That's all.

13 Q. You have any explanation for why you didn't
14 create your own treatment plan?

15 A. It's just the -- I didn't sign that or did not
16 write in new paper.

17 Q. You did not present Miss Varano with any plan,
18 whether it's this document or any other document for
19 her to sign approving doing pulps and crowns on her
20 son, did you?

21 A. We always ask the patient. We always tell the
22 patient what needs to be. There -- if there is a
23 change of plan like from fillings to pulp or crowns, I
24 have to tell the patient that.

25 Q. Sure, you do.

1 A. I tell the nitrous things, papoose was signed.
2 There is something -- few things were going on. It's
3 not that I didn't even do the exam and I --

4 Q. Where is -- where is the evidence where Miss
5 Varano is presented with this new plan and she signs
6 it and approves it?

7 A. I already told you I didn't sign, initial that.
8 That's all.

9 Q. Okay. The treatment plan, though, that she
10 approved for those teeth was for fillings, right?

11 A. I got the parent informed consent. I wrote
12 down in the chart.

13 Q. The reimbursement rate, Doctor, can we -- can
14 you look at the same billing record there to see what
15 the reimbursement rate is for pulps and crowns as
16 opposed to a filling?

17 A. You can tell me. I don't have to look.

18 Q. I think it is \$215 instead of \$55. Does that
19 sound right to you?

20 A. All right. If you say.

21 Q. I'm not testifying. I really want to verify
22 the evidence. Take a look at the billing part of 199.
23 See if you can confirm when you do a pulpotomy and a
24 crown the bill is about \$215 --

25 A. Okay.

1 Q. -- correct? You need to answer out loud?

2 A. Yes. Yes.

3 Q. All right. And you did four of those on
4 Jeremy, right?

5 A. That's right.

6 Q. So more money for the owners, right?

7 A. That was not on my mind.

8 Q. Okay. One last question on this topic of cost.
9 When you or one of your colleagues would extract teeth
10 like Jeremy had a couple of teeth extracted, are those
11 usually for young children followed by space
12 maintainers?

13 A. That's right.

14 Q. Usually to make sure that if you after
15 extracting a tooth when there's a long time to go
16 before the permanent tooth comes in you have to put
17 these space maintainers in to try to keep the teeth
18 from going in funny directions, right?

19 A. That's right.

20 Q. Can you tell from this billing chart how much
21 space maintainers are billed at? I think the record
22 shows Jeremy got one right at the end. Do you see
23 that? What's the billing rate for a space maintainer
24 in New York at that time, Doctor?

25 A. 174.

1 Q. \$174? So if you looked at the actual revenue
2 associated with extractions, you've got pulling the
3 teeth and then you got the space maintainer that goes
4 with it, right?

5 A. That's right.

6 Q. The x-rays you took on August 31st, 2006, not
7 only showed -- they showed they were aimed at teeth
8 other than D, E, F and G, correct?

9 A. No. They were aimed at D, E, F, G.

10 Q. Did the x-rays include teeth J, K and L?

11 A. The periapical.

12 Q. The periapical?

13 A. I don't know. I have to see the x-ray.

14 Q. You recall looking at the x-rays and being
15 asked whether you could see any cavities on J, K and
16 L?

17 A. Say it again.

18 Q. When you took these x-rays in August of 2006,
19 you were not only looking at D, E, F and G, but the
20 other teeth as well, I mean it was a full blown x-ray,
21 look at all the teeth; correct?

22 A. That's right.

23 Q. That included teeth J, K and L, where Dr. Bonds
24 had treatment plan for fillings on those teeth as
25 well, right?

1 A. That's right.

2 Q. And you recall that you could not see any
3 cavities on J, K and L, right? If you want to see
4 copies are in your hand and the originals are in the
5 Federal Express box.

6 A. Is it here?

7 Q. Yes, sir. The originals are in there. Can you
8 see any cavities on J, K and L, Doctor?

9 A. No.

10 Q. No. Do you know that six weeks after you took
11 those films, Dr. Bonds drilled and filled those teeth?

12 A. He must have done clinical exam because these
13 occlusal decay. They are not shown in the x-ray.

14 Q. Okay. And he did that without any local
15 anesthetic, did you know that?

16 A. Yes.

17 Q. With Jeremy's heart rate at 204?

18 MR. STEVENS: Objection.

19 THE COURT: Overruled.

20 A. The extractions?

21 Q. No, sir. The fillings on the teeth that you
22 just said you couldn't see any cavities on in on
23 August 31, he drilled on those six weeks later without
24 any anesthesia with a heart rate of 204, did you know
25 that?

1 MR. STEVENS: Objection. Misstates the
2 evidence.

3 THE COURT: Overruled.

4 A. I will see. Heart rate was 153.

5 Q. Pardon?

6 A. 204 and 153.

7 Q. When he started drilling it was at 204 and when
8 he ended it was at 153, right?

9 MR. STEVENS: Objection. Misstating the
10 evidence.

11 THE COURT: Overruled.

12 A. That's not true.

13 Q. Did you withhold anesthetic when you treated
14 Jeremy -- let me start over. Besides this visit that
15 we've been talking about where you did four pulps and
16 crowns on Jeremy in August of 2006, did you see him
17 another time in March of 2007?

18 A. That's right.

19 Q. And that time you drilled -- you filled --
20 drilled and filled a tooth, tooth T, right?

21 MR. STEVENS: Objection to form.

22 A. I filled the tooth.

23 THE COURT: Overruled.

24 A. I filled the two T.

25 Q. You did that without any local anesthetic

1 because you wanted to avoid unnecessary disturbances;
2 is that true?

3 A. Yes, because it was really small. Doesn't show
4 in the x-ray. Small clinical seen by Dr. Koury first.
5 He diagnosed that decay and I was the one who did the
6 work on T. So it was small and the way we do it use a
7 high speed in the enamel, and use a spoon or slow
8 speed in the dentist. It's just a painless procedure.

9 Q. You said, first of all, that it was a tiny
10 filling, tiny cavity that could not be seen on x-ray.
11 Is that what you're saying?

12 A. That's right.

13 Q. Then you said that you didn't give local
14 anesthetic because you wanted to avoid an unnecessary
15 disturbance, right?

16 A. No. If it's a small cavity, with this painless
17 procedure, it doesn't show with this painless
18 procedure, it's very easy to do it. Because if decay
19 is not very -- if the kid is not very cooperative, you
20 could break the needle, sharp, may totally make him
21 uncooperative. You could have the lip biting. You
22 could have the trismus muscle spasm. You could have
23 nerve damage. You have to see all those things. The
24 most important thing is give a shot. The kid may, you
25 know, lose -- it's -- if he's sitting down letting me

1 do the work he can lose that and you can make a
2 decision according to the clinical exam.

3 Q. The first time you saw Jeremy in August, did
4 you give him a shot?

5 A. Yes.

6 Q. You did? And did you give more than one shot?

7 A. Yes.

8 Q. How many shots did you give him, Dr. Aman?

9 A. Well, looking at the weight, I would give two
10 carpules to Jeremy, but I would open up the third
11 carpule for any pain or any lost lidocaine and I
12 wouldn't go far.

13 Q. So you gave him three shots in August; is that
14 right?

15 A. I wouldn't say I gave all three carpule.

16 Q. But you gave three shots, right?

17 A. Yeah, three.

18 Q. Three injections?

19 A. Yeah.

20 Q. All right. And you didn't -- he didn't --
21 nothing broke off, you didn't have any side effects or
22 any problems, did you?

23 A. No.

24 Q. And Dr. Bonds gave the local anesthetic when he
25 pulled Jeremy's two teeth, right, no problems with the

1 local anesthetic, right?

2 A. That's right.

3 Q. No disturbances associated with the local
4 anesthetic, right?

5 A. That's right.

6 Q. You thought you could drill and fill Jeremy's
7 tooth and would cause him just a little bit of pain;
8 is that true?

9 A. No.

10 MR. STEVENS: Form.

11 A. No pain at all.

12 THE COURT: Overruled.

13 Q. You have your -- still have that affidavit up
14 there, Dr. Aman. Look at your affidavit you signed in
15 on May 31st, 2013, on paragraph 21. Did you say that
16 I made a professional judgment that local anesthesia
17 would not be necessary because the cavity on tooth T
18 was shallow and the filling could be done without
19 anesthesia with little or minimal pain or discomfort
20 to Jeremy Bohn. Is that what you said?

21 A. It's just a phrase.

22 Q. Did you say that he have a little bit -- little
23 or minimal pain?

24 A. It's just a phrase to say something. But I --
25 with this we do this all the time, and I don't

1 experience any pain with the patients.

2 Q. Have you seen the follow-up x-ray of the
3 filling you did on T?

4 A. I saw.

5 Q. It's pretty deep, isn't it, sir?

6 A. No.

7 Q. No?

8 A. You cannot tell from the x-ray how deep it is.
9 It isn't that deep.

10 Q. Pardon?

11 A. It is in the dentin.

12 Q. It's well in the dentin, sir, it's getting
13 close to the pulp?

14 A. No.

15 Q. Okay. This is the pulp right here, right?
16 It's dark mushroom like thing?

17 A. This is two-dimensional picture. You cannot
18 really tell just by looking at the x-ray unless you go
19 in there.

20 Q. The dentin is where the nerve endings are?

21 A. That's right.

22 Q. And you put that filling in right there in T
23 without giving Jeremy any anesthetic, didn't you?

24 A. As I told you that.

25 Q. Did you or not?

1 A. I did not give him lidocaine because I use the
2 technique of --

3 Q. You put that big filling in there without it,
4 right?

5 A. That's what I'm trying to tell you that I --
6 the technique we use using a spoon or a slow speed
7 under the dentoenamel junction we can do that easily
8 without no pain.

9 MR. FRANKEL: That's all I have. Thank
10 you, sir.

11 THE COURT: Okay. Cross-examination?
12 Just so you know, we will break at quarter to one
13 for lunch today instead of 12:30, and we are going
14 to take an hour and fifteen minute lunch. Quarter
15 of one to two. In case any of you are clock
16 watching.

17

18 CROSS-EXAMINATION.

19 BY MR. FIRST:

20 Q. Doctor, by the way, you were asked a question
21 about nerve endings in dentin, correct?

22 A. Yes.

23 Q. Where the decay is are there any nerve endings
24 there? What's your answer?

25 A. No.

1 Q. Now, once we get this set up I want to ask you
2 about Exhibit 46. While we are waiting for that, let
3 me ask you something. You've been in court the entire
4 time, haven't you, Doctor?

5 A. Almost.

6 Q. And did you hear Miss Varano testify yesterday?

7 A. Yes.

8 Q. And did you hear her say that she was told by
9 one of the doctors at Small Smiles that Jeremy was
10 going to have crowns put on his four top front teeth?

11 A. Yes.

12 Q. And the only doctor who made the determination
13 to put four crowns on his four top front teeth was
14 you?

15 A. That's right.

16 Q. So if she had a conversation with a doctor
17 about that particular part of the treatment, that
18 would have been with you?

19 A. Yes.

20 MR. FRANKEL: I'm going to object to him
21 leading this witness, Your Honor.

22 THE COURT: Sustained.

23 Q. Doctor, you were asked some questions about
24 Exhibit 46. I want to ask you about a different part
25 of the exhibit. Do you remember how you were asked

1 about the grade C on these checkmarks that were in the
2 achieved area?

3 A. That's right.

4 Q. Doctor, looking at this Exhibit 46, they
5 actually define on the form in a portion that is above
6 the portion that you were being shown by the
7 plaintiff's attorney they actually define what
8 achieved means, don't they?

9 A. That's right.

10 Q. And could you read, if you would, what achieved
11 means according to the form in the portion that was
12 not being shown to the jury?

13 A. The performance evaluation is based on five
14 level. It's not very clear.

15 Q. Let me help you out. You're starting at the
16 top and I'm only asking about one line where it
17 defines achieve. Those employees who are graded as
18 achieved.

19 A. Those employees who are rated as achieved
20 must -- or below have not met the expectations of the
21 children's dental clinic and will be required to
22 develop an action plan to improve.

23 Q. And up above that where it says those employees
24 who are rated achieved, it's kind of cutoff, have met
25 or exceeded, you see that?

1 A. Those employees who are rated as achieved have
2 met or exceeded the expectations of the children's
3 dental clinic.

4 Q. Okay. So where you have achieved on that form,
5 it means that you have actually met or exceeded the
6 expectations of the clinic; is that correct?

7 MR. FRANKEL: Objection. Leading.

8 THE COURT: Sustained.

9 A. Say again. I'm sorry.

10 Q. Okay. That portion of the form indicates that
11 if you reached the level of achieved that you have met
12 or exceeded the expectations of the clinic; is that
13 true?

14 A. Must not have met the expectations.

15 Q. No. Where you -- the part you just read,
16 achieved?

17 A. Yes.

18 Q. Okay. That's the part I'm asking about. Now,
19 you worked at the Syracuse clinic from August of 2005
20 until FORBA was sold in September of 2006, correct?

21 A. That's right.

22 Q. And you continued to work there a number of
23 years after that as well?

24 A. That's right.

25 Q. And you've been asked about Mike Roumph. You

1 heard the name Dan DeRose. Dr. Randazzo was a lead
2 dentist there. And Dr. Khan was there, a lead dentist
3 there during that period of time; is that correct?

4 A. That's right.

5 Q. And did anyone ever pressure you, Doctor, to --
6 with respect to your dental decisions with respect to
7 a particular patient?

8 A. No.

9 Q. Did anyone ever interfere with your
10 professional judgment with respect to any particular
11 patient?

12 A. No.

13 Q. And was all the treatment that you provided to
14 Jeremy Bohn based upon your dental judgment?

15 A. That's right.

16 Q. And is it your testimony here today that all
17 the treatment that you provided was dentally indicated
18 for Jeremy Bohn?

19 A. Yes.

20 Q. And is it your belief that all that treatment
21 was in Jeremy Bohn's best interest?

22 A. That's true.

23 MR. FIRST: That's all I have. Thank you.

24 THE COURT: Thank you.

25

1 CROSS-EXAMINATION

2 BY MR. McPHILLIAMY:

3 Q. Afternoon, Dr. Aman.

4 A. Hi.

5 Q. You were asked some questions before about a
6 semiannual review of you which you signed off on
7 December 2005, do you remember that?

8 A. That's right.

9 Q. And there were notations in that semiannual
10 performance review of December 2005 that you needed to
11 increase the number of procedures. Do you remember
12 that?

13 A. That's right.

14 Q. And there was also notations that you need to
15 increase production by doing more procedures on each
16 patient. Do you remember that?

17 A. That's right.

18 Q. And you told us that you initially saw Jeremy
19 on August 31st, 2006; is that correct?

20 A. That's right.

21 Q. And there was a treatment plan in place from
22 May 23, 2006 --

23 A. That's right.

24 Q. -- is that correct? Now, on -- when you saw
25 Jeremy on August 31st, you performed treatment on

1 teeth letters D, E, F and G; is that correct?

2 A. That's right.

3 Q. And you know that at the first visit of May 23,
4 Dr. Bonds had extracted teeth letters B and I. Is
5 that your understanding?

6 A. That's right.

7 MR. FRANKEL: I'm going to object to him
8 leading the witness, Your Honor.

9 THE COURT: I'll sustain the objection.

10 Q. I'm sorry. May 23, 2006, what treatment did
11 Dr. Bonds render to Jeremy?

12 A. He extracted two teeth.

13 Q. What teeth were they?

14 A. B and I.

15 Q. All right. And I believe plaintiff's counsel
16 asked you before about some type of space maintainer;
17 is that correct?

18 A. That's right.

19 Q. Okay. And the Medicaid reimbursement fee for a
20 space maintainer is \$174?

21 A. That's right.

22 Q. He would need a space maintainer to replace --
23 which one would he need a space maintainer to replace
24 tooth letter B, which was lost?

25 A. In the future, yes.

1 Q. Okay. And he would need -- would he need a
2 space maintainer to -- I'll withdraw my question.
3 Would Jeremy need a space maintainer to replace tooth
4 letter I which was lost on May 23?

5 A. That's right.

6 Q. Okay. Now, assuming that Jeremy lost teeth B
7 and I -- withdrawn. Given the fact that Jeremy lost
8 teeth number B and I on May 23rd, and you saw him on
9 August 31st, would you expect for his mouth or those
10 extraction sockets, the extraction sites to be healed
11 by the time you saw him at the end of May?

12 THE COURT: At the end of August?

13 MR. McPHILLIAMY: End of August, thank
14 you, Your Honor.

15 A. Yes.

16 Q. So when you saw him on May -- on August 31st,
17 2006, if you want to increase the -- your production
18 by doing more procedures on each patient, you could
19 have done the space maintainers for teeth B and I,
20 would you agree with me on that?

21 A. Would have done fillings also.

22 Q. Well, let's ask about that. When you finished
23 working on teeth E, F, G and H -- withdrawn. When you
24 finished working on teeth E, F, D, E, F and G on that
25 day, August 31st, how many -- how much more work did

1 Jeremy need in his mouth?

2 A. He had five more -- five more teeth to go.

3 Q. Okay. Now, if you want to increase your
4 production would -- could you have worked on any of
5 those five teeth?

6 A. Could have.

7 Q. If you want to do more procedures on each
8 patient, could you have worked on any of those five
9 teeth?

10 A. I could have.

11 Q. Did you on August 31st, work on any of those
12 five teeth?

13 A. No.

14 Q. Now, you next saw Jeremy -- withdrawn. What's
15 the next time you saw Jeremy?

16 A. It was March of 2007.

17 THE COURT: Little bit louder, Doctor.

18 A. Sorry. March 22, '07.

19 Q. Okay. And did you place a filling into
20 Jeremy's mouth on that date?

21 A. That's right.

22 Q. And what letter was that filling?

23 A. T.

24 Q. What tooth was it on?

25 A. T.

1 Q. And the visit before then, what was the date of
2 that?

3 A. 2/22/07.

4 Q. February 22, 2007?

5 A. That's right.

6 Q. Who saw Jeremy on February 22, 2007?

7 A. Dr. Koury.

8 Q. Dr. Koury Bonds?

9 A. Yes.

10 Q. What did Dr. Koury Bonds do for Jeremy on
11 February 22, 2007?

12 A. He did an exam and hygiene check.

13 Q. Okay. Are you familiar with something known as
14 conversion?

15 A. That's right.

16 Q. What is your understanding as to what
17 conversion is?

18 A. Conversion is when the patient needs some work
19 and come to the hygiene and we don't have much
20 patients in the operative side, we can convert patient
21 from hygiene to operative to do the work on the
22 patient.

23 Q. Okay. Now, on February 22, 2007, did Dr. Bonds
24 convert Jeremy from a hygiene patient into an
25 operative patient?

1 A. No.

2 Q. Now, you were asked before about the order of
3 the treatment on the treatment plan from May 23, 2006.
4 Do you remember being asked about that?

5 A. Yes.

6 Q. And are you familiar with the concept known as
7 prioritization of dental treatment?

8 A. Say again.

9 Q. Sure. Doctor, is there an order that the
10 dentist follows as to how different restorations or
11 different treatment is going to be carried out in a
12 patient?

13 A. I follow the extent of the decay.

14 Q. So if there is --

15 A. More decay.

16 Q. Do you treat the teeth which have the most
17 decay? Which one would you treat, the teeth which
18 have the most decay initially?

19 A. That's right.

20 Q. And what teeth would you treat after you
21 treated the teeth with the most decay?

22 A. The next one.

23 Q. Those would be teeth with less decay?

24 A. Whatever is less decay, yes.

25 Q. Those include teeth that have one surface

1 fillings?

2 A. Yes.

3 Q. Now, Doctor, did anyone from New FORBA place
4 pressure on you to -- withdrawn. Did anyone from New
5 FORBA influence your decision-making process with
6 regard to diagnosing patients?

7 A. No.

8 Q. Did anyone from New FORBA influence your
9 decision-making process in developing treatment plans
10 for patients?

11 A. No.

12 Q. Anyone from New FORBA influence your
13 decision-making process for actually treating the
14 patient?

15 A. No.

16 Q. Did they influence your professional judgment
17 in diagnosing patients developing treatment --
18 developing treatment plans with patients and treating
19 patients?

20 A. No.

21 Q. The lead dentist that were there did they do
22 any of those things? Withdrawn. The lead dentists --
23 withdrawn. You were an associate dentist at Small
24 Smiles of Syracuse; is that correct?

25 A. That's right.

1 Q. You always had a lead dentist that was above
2 you?

3 A. Yes.

4 Q. The lead dentist at Small Smiles ever influence
5 you in your decision-making process for diagnosing
6 patients?

7 A. No.

8 Q. They ever influence you or your decision-making
9 process for treatment planning of the patients that
10 you saw?

11 A. No.

12 Q. How about the treatment that you actually
13 rendered to the patients?

14 A. No.

15 Q. Did any of the lead dentists at Small Smiles
16 influence your professional judgment with regard to
17 how you treated the patients?

18 A. No.

19 MR. McPHILLIAMY: Nothing further, Your
20 Honor.

21 THE COURT: Thank you. Mr. Stevens?
22
23
24
25

1 CROSS-EXAMINATION

2 BY MR. STEVENS:

3 Q. Dr. Aman, good afternoon. Before I ask you
4 about your bio and background, let me ask you this one
5 question, you said that you use a technique which is
6 different above the dentoenamel junction and below the
7 dentoenamel junction. Do you recall that?

8 A. Yes.

9 Q. Would you tell the jury why that is?

10 A. Use -- when it's a small filling, we use a high
11 speed in the enamel and --

12 THE COURT: Louder, please.

13 A. -- you use a high speed in the enamel and
14 because the enamel doesn't have any nerves, so you can
15 use the high speed and clean the decay. But when you
16 reach the dentoenamel junction under we can use the
17 spoon or a slow speed to clean the decay. That's
18 without the -- any lidocaine. So if it's small, it's
19 not showing in the x-ray, you can use this technique
20 without giving any shot in the mouth and because the
21 decay has -- it's a dead tissue, it doesn't give any
22 pain, you can take it.

23 Q. Does the area of decay have any nerve fiber
24 whatsoever?

25 A. No.

1 Q. Thank you. Would you be so kind as to tell the
2 jury where were you born?

3 A. I was born in Lahore, Pakistan.

4 Q. Tell the jury something about your family and
5 your early days?

6 A. Uhm, my father is a physician. Is a professor
7 of community medicine. And four brothers and sisters.
8 Since my father was a doctor so I -- I always thought
9 I would also be a doctor or a dentist, and I became a
10 dentist. In 1992, I graduated from the best college
11 of my country. And after doing one year residency, I
12 tried -- join some private practices and some
13 orthodontic practice as well.

14 Q. Can I interrupt you for a second. How many
15 years was your dental college?

16 A. Dental college four years.

17 Q. And how many years was your residency after
18 that?

19 A. One year.

20 Q. And during the residency, did you treat
21 patients as a dentist?

22 A. Yes, that's right, I did treat patients.

23 Q. Then go ahead, please.

24 A. Then I worked for a few years for orthodontics.
25 And then I got married to a local girl here in Auburn,

1 New York, and she brought me here to this country.

2 Q. By the way, Doctor, by the time you came to
3 this country, how many years had you been practicing
4 as a practicing dentist?

5 A. Eight years.

6 Q. During that eight years, had you performed
7 pulpotomies?

8 A. Plenty, lot.

9 Q. Please continue.

10 A. Then I came in 2001 and passed my exams. 2003
11 went to Boston University. 2005, I graduated. Since
12 my wife was from this -- she was from this area, so we
13 came to this area. First job was Small Smiles.
14 Comparing to Pakistan, where there is really no -- not
15 much dental care and a lot of areas are -- there is no
16 treatment for them.

17 Q. Doctor, let me ask you this, when you came to
18 Small Smiles, who did you interview with before you
19 got that job?

20 A. Dan DeRose.

21 Q. And after practicing eight years in Pakistan,
22 what were your impressions of patients that you were
23 treating here in the Syracuse area?

24 A. I was a little surprised to see there were so
25 many compared to Pakistan where there is very few

1 doctors and there is a lot of less care. I was
2 surprised to see here that they're a lot of -- there's
3 very few providers for such a big population. There's
4 -- patients have nowhere to go, and I was surprised to
5 see many moms crying and, you know, they have no place
6 to go. Parents really requesting us even if you refer
7 them out, they would come back to us. So I saw really
8 a big need. I think this is -- I didn't see much
9 difference back home here. So I was a little bit
10 surprised how much there is no provider here. I mean
11 there is nobody to take care of them if the kid is not
12 sitting and local dentist will not touch them and they
13 would all come to us. So I saw that there was a
14 big -- there is a big need to help this community
15 so...

16 Q. Thank you, Doctor. How long did you stay at
17 the clinic in Syracuse, the Small Smiles clinic?

18 A. I stayed for about five years.

19 Q. Is that your intention when you started?

20 A. No, my intentions were to stay here for very
21 short time. I always wanted to have a family type
22 family practice where I can see both adults and kids
23 so this was just they were just offering just kids so
24 I didn't want to stay here for very long. And that's
25 why I never ask -- never apply for a lead position. I

1 never asked them a raise. I never got a bonus, except
2 one time when there was more number of dentists there.
3 So as such there was no binding for the like to do
4 unnecessary work or there was nothing in my mind like
5 this.

6 Q. Doctor, we heard when one of the other dentists
7 was on the stand that the government had a loan
8 forgiveness program which would actually pay back
9 loans of dentists who worked for the underserved
10 population?

11 A. That's true.

12 Q. Doctor, did you make any application for a
13 program like that?

14 A. No. There was a --

15 Q. No?

16 A. No.

17 Q. May I ask you please tell the jury why you
18 didn't? Did it require a time commitment?

19 A. Yes. There was a loan program dentists would
20 work here. They can work for two years and they can
21 get their loan reimbursed. I have a loan, too, but I
22 never had long-term here so I never applied for it,
23 that loan reimbursement thing. Though, I do -- I stay
24 for five years, but I never applied for that. The
25 reason I stayed there was there was really a big need

1 and I was a hardworking guy. I was a pretty stable
2 guy, so I just sort of helping people, and I was able
3 to make some difference here.

4 Q. Doctor, was it a busy practice or a slow
5 practice?

6 A. It was --

7 Q. Or otherwise?

8 A. It was very busy.

9 Q. Now, we heard a question, very carefully
10 sculpted question to Miss Varano yesterday about how
11 many kids she would see in the parking lot. Let me
12 ask you a more pertinent question. How did your
13 waiting room look on a typical day at the office?

14 A. It was always full. And people will ask for --
15 they cannot come back again, they have transportation
16 problems, they need a lot of help. So basically the
17 atmosphere I was liked by the office. I was
18 appreciated. My operating room was -- my dental
19 office was full of thank you cards and all those that
20 made me stay there for awhile, and then after a few
21 years I decided to go.

22 Q. Where are you practicing dentistry right now?

23 A. Right now I'm in Cicero. Close by here and
24 it's a good family practice and I'm happy with it.

25 Q. Okay. Doctor, do you have plans to stay in

1 this immediate area or to leave?

2 A. Well, I plans to stay here. I have -- I have
3 served this community a lot and I will keep serving.

4 Q. Tell the jury whether you have a family here in
5 the Syracuse area?

6 A. I have two kids.

7 Q. What ages?

8 A. About close to six and four.

9 Q. Boy and a girl?

10 A. Boy and a girl.

11 Q. Could you estimate for the jury in some
12 approximate way about how many children have you
13 helped during the time that you -- during the five
14 years you spent at the Small Smiles clinic?

15 A. I don't have a number. But maybe thousands,
16 15, 20,000 kids, if not less. I mean there were a lot
17 of kids I've seen.

18 Q. Have you ever made a decision for a child on
19 anything other than what was the best interest of the
20 child?

21 A. I always made a decision that was best interest
22 of the child.

23 Q. Are you a United States citizen?

24 A. Yes.

25 Q. You said you met Dr. Khan at Boston University?

1 A. That's right.

2 Q. Is he also a United States citizen?

3 A. That's right.

4 Q. When did you become United States citizen?

5 A. Became a citizen in 2006.

6 Q. Do you have other family members who live here

7 in the United States?

8 A. Yes.

9 Q. Would you please tell the jury about that?

10 THE COURT: Before you answer the
11 question, can counsel please approach for a
12 second.

13 (A discussion off the record at the Bench, all
14 counsel present.)

15 THE COURT: All right. We will have our
16 lunch break. The question has been withdrawn, and
17 we will start back again at two o'clock. Have a
18 good lunch. Don't talk about the case. Don't do
19 any independent research.

20 (Luncheon recess.)

21 THE COURT: Can I see counsellors up here
22 one second, too, about the next witness.

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

25 (Luncheon Recess.)

1 (Afternoon Session - October 3, 2013.)

2 THE COURT: Ready.

3 MR. McPHILLIAMY: Your Honor, we're still
4 missing someone.

5 THE COURT: Who we missing? He didn't get
6 back. That could be good. That could be bad.

7 MR. McPHILLIAMY: I haven't heard. He's
8 coming.

9 THE COURT: We won't wait it out. Unless
10 you want.

11 MR. McPHILLIAMY: I'd like to wait a
12 little while, if we could. Then again I don't
13 want to prejudice Mr. First.

14 THE COURT: I think we have to go. We're
15 going to just finishing cross here.

16 (Jury seated in the jury box at 2:08 p.m..)

17 THE COURT: I heard there was a question
18 about when we're going to break tonight. We are
19 going to break at four o'clock. Okay. Proceed.

20 MR. STEVENS: Thank you. Afternoon.

21 BY MR. STEVENS: (Cont.)

22 Q. Good afternoon, Doctor.

23 A. Afternoon.

24 Q. Doctor, of the ten visits, you saw Jeremy on
25 the second visit and the sixth visit?

1 A. That's right.

2 Q. And the last visit on the 10th?

3 A. Yes.

4 Q. I'd like -- before I just ask you to go through
5 two of those visits. I'd like to bring your mind back
6 to the some questions that were asked of you by Mr.
7 Frankel about the performance review that we seen so
8 many times on the screen. Do you recall that
9 performance review with Janine Randazzo?

10 A. Yes.

11 MR. STEVENS: Can I have that on the
12 screen, please. Thank you.

13 Q. Now, I want to ask you to help point out to the
14 jury thing. Please blowup this section. Am I reading
15 this correctly, Doctor, and does it say, this form you
16 signed, my signature indicates that I have read and
17 discussed this summary with my manager. It does not
18 indicate agreement or disagreement with the
19 evaluation.

20 A. That's right.

21 Q. Did you have any agreement with this
22 evaluation?

23 A. No.

24 Q. When you saw Jeremy in 2006 on August 31st, had
25 you ever met him before?

1 A. No.

2 Q. How does a patient like that come to you in the
3 ordinary course of the day?

4 A. Uhm, when the patient young child three or four
5 years old or five years old comes to you, you have to
6 make a connection with the patient because that
7 patient is not going to sit in the chair or let you do
8 any work. So you have to be friendly with him. He
9 should have -- should be some little bit of comfort
10 zone with you and him, otherwise, you know three or
11 four or five-year-old will -- immature, they will
12 never let you work. So you have to first make a
13 connection. You have to show your gratitude and talk
14 to them, give some gifts if you can, and have some
15 initial talking and make him a little bit comfortable.
16 Then if after this you can -- once the patient is a
17 little bit comfortable, you can make him sit in the
18 chair and tell him -- tell him or her to open the
19 mouth and tell-show-do with the mirror. See, examine
20 the teeth and with the x-rays. Uhm, and then make
21 analysis from there what there needs to be done and
22 you are ready to talk to the parent.

23 Q. And how do you do the examination or assessment
24 inside the child's mouth?

25 A. We use a mirror, explorer.

1 Q. Tell the jury, don't tell me.

2 A. Use the mirror, explorer, and with palpation we
3 see if anything is soft structure there, oral hygiene.
4 These two.

5 Q. Okay. And when you're making this assessment
6 is there someone in the room with you, assuming the
7 parent is not there, is there someone in the room with
8 you other than you and Jeremy?

9 A. They're two assistants with me.

10 Q. What is their role?

11 A. Their role is to also help me in making the
12 patient more comfortable and show that we're more
13 caring nature and the whole team works like together,
14 two girls -- two assistants. I'll be talking and they
15 will be helping and to make the patient comfortable.

16 Q. Now, after --

17 THE COURT: Okay. You have to speak up.

18 Q. After examining Jeremy, I will try to be a role
19 model for you with my loud roaming voice. After
20 examining the young patient, what do you do next?

21 A. Of course, you have already seen the chart.

22 THE COURT: Little bit louder.

23 A. You have already seen the chart.

24 Q. Let me ask you about that. What chart are you
25 talking about?

1 A. The chart for the patient who is coming inside
2 to have examined.

3 Q. The odontogram?

4 A. The odontogram.

5 Q. The treatment plan?

6 A. The treatment plan, the whole chart you have to
7 see it and then you to make a decision that you really
8 agree what the previous dentist has said and if you
9 agree with it, you go ahead and, of course, after
10 telling the parents you can do the same treatment or
11 if you disagree with it then you have to -- you have
12 to tell the parent that this is what I think what it
13 needs now. There is a little bit of change of plan
14 here.

15 MR. STEVENS: Can I have 23 please, and
16 blowup the odontogram.

17 THE COURT: You're going because we have
18 that outside noise, too, you will really have to
19 just shout. Okay.

20 THE WITNESS: All right.

21 Q. Doctor, you have the treatment plan and the
22 odontogram in front of you, and the odontogram is up
23 on the board. Tell the jury what were the findings
24 made on the first visit before you saw Jeremy with
25 respect to D, E, F, G, correct, the four front uppers?

1 A. Dr. Koury saw this patient first time and he
2 examined. He said that there's tooth number D needs a
3 crown. E needs two surface filling. F needs a two
4 surface filling. And G needs a one surface filling.

5 Q. And did he mark in red where decay had been
6 found?

7 A. Yes.

8 Q. All right. When you examined you were -- were
9 your findings exactly the same or had things changed?

10 A. Things changed. Things changed. I decided
11 that the these teeth needs crowns because of the
12 extent of decay.

13 MR. STEVENS: Blowup this part, please.

14 Q. And after the examination, did there come a
15 time when you or someone on your behalf added
16 information to E, F and G?

17 A. This is my handwriting. I did.

18 Q. Okay. It's done in a different pen in
19 different handwriting, correct?

20 A. Yes. This is my handwriting, yes.

21 Q. Am I reading that correctly, NSP, question
22 mark?

23 A. Yes.

24 Q. Would you tell the jury New Smile being the
25 crown and pulpotomy -- the P for pulpotomy, why is

1 there a question mark there at that point in time?

2 A. New Smile and pulpotomy.

3 THE COURT: Little bit louder.

4 A. Why do we do a pulpotomy? When the decay
5 extends into the nerve, it's just like a baby root
6 canal. And in the front teeth, there is -- it's a
7 very thin enamel. It's very thin and this is the --
8 it has the biggest chamber, and if you clean the decay
9 you go right then into the nerve. If the decay is
10 little bit bigger, it goes right there. But you
11 cannot make a decision by just looking at the x-ray
12 all or by visually that this decay will go to the
13 nerve. Nobody can. No. So you have to -- the first
14 thing is you have to dig out the decay and see that
15 really it goes to the nerve or not. So my question
16 mark is that I do believe that New Smile crowns need
17 to be done, but do I really to take out the nerve I
18 was not sure. So that question mark was that it could
19 happen that I need to have those pulpotomy done.

20 Q. Okay. And did there come a time when you have
21 to speak with the parent to tell them what you intend
22 to do?

23 A. Total change of plan here so you have to -- we
24 always do. You have to tell the parent that this is
25 fillings which were decided before by a previous

1 dentist. I don't agree with that. And if the parent
2 think the previous dentist is better, she can select
3 the previous dentist. It's my decision and she -- he
4 or she is -- can you know whatever they think. But my
5 clinical exam I advise two crowns and pulpotomy may
6 be, and I was able to do both of them and there was no
7 problem.

8 Q. What would be the benefit of having crowns on
9 the four front uppers that had significant decay as
10 opposed to fillings?

11 A. The bigger fillings they don't really -- they
12 don't stay for a long. Once you have the decay like
13 the patient had gingivitis and it's -- if it is under
14 the gum margin and it is bigger, they don't stay for
15 very long. They don't stay for so many years. The
16 bigger fillings they will not stay long.

17 Q. When you had your discussion with the parent or
18 guardian explaining what you planned to do, did you
19 need them to get -- did you ask for a consent for
20 protective immobilization on this date, August 31st,
21 2006?

22 A. Yes, I did.

23 MR. STEVENS: 36, please.

24 Q. Why did you do that? Why did you ask the
25 parent to give you permission to use a papoose?

1 A. Patient not be very cooperative.

2 Q. Doctor, I understand you don't remember this
3 event. But why in general --

4 A. Yes.

5 Q. -- would you ask for this under this
6 circumstance?

7 A. The behavior of the patient. Immature. By
8 looking at the previous visit may not cooperate with
9 you. These are the two, three things that I thought.

10 Q. Would you blowup this part. Doctor, did you
11 discuss one of those three items with the parent or
12 guardian according to this check and signature?

13 A. Yes.

14 Q. He or she requires diagnosis or treatment and
15 cannot cooperate due to a lack of maturity?

16 A. That's right.

17 Q. Is that something you discussed?

18 A. Yes.

19 Q. In my opinion, does there need to be an
20 emergency situation in order to ask for permission to
21 use protective immobilization?

22 A. Say again, sir.

23 Q. Does there need to be an emergency in order to
24 ask for permission to use the papoose?

25 A. Sorry.

1 Q. The word is emergency?

2 A. Yes.

3 Q. Was there an emergency situation going on?

4 A. No.

5 Q. Okay. Does there have to be an emergency to
6 ask for this permission?

7 A. No.

8 Q. Was there already in the chart permission to
9 use lidocaine or nitrous?

10 A. Yes.

11 Q. Signed on the last visit, true?

12 A. That's true.

13 MR. STEVENS: Could we go to page 35, the
14 operative procedure note.

15 Q. And this area. Doctor, is it true that you --
16 what did you use -- I'm sorry. Let's go back to the
17 chronology. What happens next after you have examined
18 the child, you talked to the parent, and told her that
19 you recommend crowns, but pulpotomies may be needed.
20 You got a consent to use protective immobilization.
21 You returned to the operatory. Tell the jury what
22 happens next?

23 A. Sometimes the parents wants to accompany the
24 kid. Sometimes they want to stay outside. It's their
25 own decision. Then in this case after making the

1 patient comfortable, I would start the nitrous. Wait
2 a few minutes for it to get -- to be effective and --

3 Q. Let me ask you about the teeth themselves. At
4 what point do you determine whether the decay can be
5 removed with or without a pulpotomy?

6 A. When we start taking out the -- when do we --

7 Q. Sure. Tell the jury what happens when you
8 start working on the teeth and when you make the
9 decision regarding pulpotomy or no pulpotomy?

10 A. The first step we do is to start use slow speed
11 and start to dig out the decay and you will know there
12 that if you are into the nerve, you will need to take
13 out the -- you will need to do the pulpotomy and take
14 out the nerve.

15 Q. By the way, Doctor, there should be no
16 misunderstanding, you used lidocaine in this case?

17 A. Yes.

18 Q. You gave the patient injections of local
19 anesthesia so that he would feel nothing when you did
20 your work, true?

21 A. Yes.

22 Q. And in addition to lidocaine, you were also
23 successful in getting Jeremy to breathe through his
24 nose and use nitrous oxide?

25 A. That's right.

1 Q. Are children the same every visit?

2 A. No.

3 Q. Did you think the fact that you were able to
4 convince Jeremy to use nitrous that means that someone
5 else on a different visit would be able to do it?

6 A. Patient is different every time. The same
7 patient which may cooperate with me may not cooperate
8 next time with the same doctor. So I cannot really
9 say for any other person.

10 Q. So you're removing decay?

11 A. Yes.

12 Q. And there comes a time when you determine
13 something in terms of pulpotomy or no pulpotomy?

14 A. Yes.

15 Q. Please explain that.

16 A. The first step is to take out the decay. Once
17 you take out the decay and you are to the -- into the
18 nerve, you have to take out the nerve, and you have to
19 clean the chamber and start the slide prep because as
20 you do pulpotomy you have to crown them.

21 Q. Is the decay you're taking out softer or harder
22 than the surrounding tooth?

23 A. Very soft.

24 Q. And does -- does decay lead you to the answer?

25 A. Yes. Decay, that's what you dig into it. You

1 clean it. You find the -- you follow into that nerve.

2 Q. After you put the four crowns on, pulpotomy,
3 did you do anything else on that date?

4 A. No.

5 Q. Okay. Who brings Jeremy from the operatory
6 back to his parents?

7 A. I would do it.

8 Q. And does he visit the treasure chest first, the
9 toy box?

10 A. Yes.

11 Q. Is that done with every child on every visit?

12 A. Always get presents.

13 Q. Did you see Jeremy again on his sixth visit to
14 the Small Smiles clinic on March 22, 2007?

15 A. Yes.

16 MR. STEVENS: Can we have page 46 up,
17 please. Thank you.

18 Q. Doctor, although on the last visit you chose to
19 use local anesthesia, did you need local on this
20 occasion?

21 A. No.

22 Q. And the last visit you had been able to use
23 nitrous, were you able to use nitrous on this visit
24 again?

25 A. Yes.

1 Q. The --

2 MR. STEVENS: Would you scroll down,
3 please, a bit.

4 Q. Would you tell the jury what tooth were you
5 working on on that date?

6 A. It's tooth number T.

7 Q. Had that been a treatment plan by another
8 doctor who before you already seen the decay on that
9 tooth?

10 A. That's right.

11 Q. Which tooth is tooth number T, would you tell
12 the jury whether it is upper lower, front or back?

13 A. T is the last tooth on the bottom. It's the
14 biggest baby tooth.

15 Q. It's the biggest baby tooth?

16 A. Yes.

17 Q. And which surface of the tooth had decay?

18 A. The biting surface.

19 THE COURT: Just a little bit louder.

20 THE WITNESS: Biting surface.

21 Q. See there is an O there. What does that mean?

22 A. Occlusal.

23 Q. Occlusal. And for a procedure it says SA, what
24 does that mean?

25 A. A silver filling.

1 Q. And that stands for silver amalgam?

2 A. Yes.

3 Q. A typical type of filling we get in the back of
4 the mouth?

5 A. Yes.

6 Q. And you have the comment one surface, true?

7 A. That's right.

8 MR. STEVENS: Will you scroll down to the
9 bottom of the page please.

10 Q. Did you make a note at the bottom regarding who
11 was present in the room?

12 A. Yes.

13 Q. What did that note say?

14 A. Received informed consent guardian, RICG.
15 Parent present in the room. Did okay.

16 Q. Hold on one second. The witness -- what does
17 received informed consent guardian mean?

18 A. That parent allow me to do the work on the
19 patient.

20 Q. And parent allowed in room is self-explanatory?

21 A. Yes.

22 Q. By the way on this date -- you go to the top,
23 please. Jeremy had a little better behavior rating;
24 is that true?

25 A. Yes.

1 Q. He's up to a two, which is negative, but it's
2 better than before?

3 A. Yes.

4 Q. Okay. You didn't have to ask for permission to
5 do protective stabilization, true?

6 A. True.

7 Q. As a matter of fact, after the third visit no
8 one ever asked again; is that true?

9 A. That's true.

10 MR. STEVENS: Could we go back please to
11 page 35. And --

12 Q. After you spoke to Jeremy's mom to get and got
13 consent to do the work that you needed to do on the
14 upper four, did you make a note in the chart to
15 confirm the fact that you had received that consent?

16 A. Yes.

17 Q. And am I pointing to that right now?

18 A. That's right.

19 Q. Tell the jury what that is?

20 A. Received informed consent of the guardian.

21 Q. Okay. Would you ever have done the treatment
22 without parents permission?

23 A. No.

24 Q. Ever hurt a child unnecessarily?

25 A. No. Never.

1 Q. Did you ever hurt Jeremy?

2 A. Never.

3 Q. Did you ever cause Jeremy pain?

4 A. Never.

5 Q. Okay. Did you hear Mr. Frankel or one of the
6 other plaintiff's attorneys questioning Dr. Khan about
7 e-mails and that Dr. Dimitri Filostrat --

8 A. That's right.

9 Q. Did you work with Dr. Filostrat for awhile?

10 A. Yes.

11 Q. Did you know Dr. Filostrat?

12 A. Yes, little bit, yes.

13 Q. You heard there has been a -- been discussion
14 about whether Dr. Filostrat was working hard or
15 working efficiently or otherwise. Would you please
16 tell the jury something about that?

17 A. What I remember is he was here for short time.
18 He came from Florida. He had I think --

19 THE COURT: You have to speak up.

20 A. He did not work for a long time. And so
21 probably, you know, he was -- he had, you know, he had
22 -- he had some -- he was about 70 years old something.
23 I don't remember his age. So it was hard for him to
24 work for so many hours. So that's what the sometime
25 he was sitting in his room, kitchen. So that was

1 the -- that's what I recall.

2 TRIAL JUROR: We can't hear.

3 TRIAL JUROR: So hard to hear you.

4 THE COURT: You have to speak up.

5 TRIAL JUROR: Please face us.

6 THE WITNESS: All right.

7 BY MR. STEVENS: (Cont.)

8 Q. I'll ask it this way. Did you hear Dr. Khan
9 describing Dr. Filostrat at the Small Smiles clinic?
10 That's a yes or no? When you were in the courtroom
11 did you hear Dr. Khan describing how Dr. Filostrat was
12 an older retired gentleman who really wasn't working
13 very much?

14 A. That's right.

15 Q. Do you agree or disagree with that?

16 A. I agree.

17 Q. You heard Miss Varano mention that she had
18 tried to get help from a pediatric dentist in the area
19 a Dr. Ruff. Did you recall her saying that? Did you
20 hear her say that?

21 A. Yes.

22 Q. Who is Dr. Ruff?

23 A. Dr. Ruff is a periodontist in I think Rome.

24 Q. Did Dr. Ruff take referrals from the Small
25 Smiles clinic? Could you send patients to see him?

1 A. He would not take Medicaid at that time.

2 Q. What was the situation in general in terms of
3 your ability to give referrals that would be helpful
4 if a patient didn't want either protective
5 stabilization or any sort of treatment that wasn't --
6 that was going on at Small Smiles clinic, if someone
7 wanted to go out elsewhere?

8 A. There were very few areas they could go. There
9 was a lot of long waiting list. They could go to
10 University Hospital, but there was a waiting list of I
11 don't exactly remember, about ten months or a year.
12 Eastman in Rochester had a long waiting list, seven,
13 eight months may be. There was a hospital in
14 Binghamton which had a long waiting list.

15 Q. Doctor, do you recall learning that some of
16 those places even send letters? Do you recall
17 learning that that hospital in Binghamton, our Lady of
18 Lourdes refused to allow --

19 THE COURT: Excuse me, sustained.

20 MR. STEVENS: Can I have --

21 Q. Doctor, you saw the picture that was on the
22 board the other day of Jeremy Bohn?

23 MR. STEVENS: 1045, please. 44, please,
24 thank you.

25 Q. Would you tell the jury are these front four

1 uppers the crowns that you placed?

2 A. Yes.

3 Q. How do you feel about that?

4 A. I feel very proud. Look very nice.

5 MR. STEVENS: Thank you. Nothing more.

6 THE COURT: Thank you. Redirect?

7 MR. FRANKEL: Your Honor.

8

9 REDIRECT EXAMINATION

10 BY MR. FRANKEL:

11 Q. You said that you didn't ever hurt Jeremy,
12 right?

13 A. That's right.

14 Q. If those four pulps and crowns that you put on
15 him he didn't need, would you agree with me you
16 unnecessarily traumatized a little boy?

17 MR. McPHILLIAMY: Objection to form.

18 A. I would not.

19 THE COURT: Overruled.

20 A. I would never do unnecessary work.

21 Q. I know that's what you say and ultimately the
22 jury is going to --

23 MR. STEVENS: Objection to the summation
24 and argument.

25 THE COURT: Overruled.

1 Q. Dr. Aman, I'm just asking you for just a
2 moment, I know what you have said, but if in fact the
3 procedures were unnecessary and this little boy went
4 through four pulpotomies and four crowns, thanks to
5 you that he didn't need to endure, would you agree
6 with me that he was seriously injured?

7 MR. STEVENS: Objection. Argumentative
8 and insulting.

9 A. That's the wrong thing. It's a wrong thing.

10 THE COURT: Overruled.

11 Q. It's a very wrong thing to do to a little
12 three, four-year-old boy, isn't it?

13 A. I agree with you.

14 MR. STEVENS: Objection. Argumentative
15 and insulting.

16 THE COURT: Overruled.

17 Q. You said that things changed from the time that
18 Dr. Bonds saw Jeremy in May until you saw him in
19 August. What information do you have about were there
20 any x-rays that you could view of teeth D, E, F and G,
21 that were taken in May?

22 A. No.

23 Q. So you didn't have a basis to compare side by
24 side here's what the teeth looked like in May, here's
25 what they look like in August, right?

1 A. That's right.

2 Q. And is there anything in the chart that
3 reflects why you're now saying that you thought he
4 needed crowns, the odontogram doesn't say it, that was
5 filled out by Dr. Bonds, right?

6 A. That's right.

7 Q. And -- and based on the odontogram, Jeremy in
8 Dr. Bonds view needed fillings, right?

9 A. That's correct.

10 Q. You never changed the odontogram to reflect
11 additional decay or something that would change the
12 basis for his decision if they needed fillings, right?

13 A. No, I did not.

14 Q. Uhm, did I hear you to say that you only do a
15 pulpotomy when the decay is in the nerve; is that
16 right?

17 A. Yes.

18 Q. And then you said it's impossible to diagnose
19 the need for a pulpotomy on an x-ray; is that right?

20 A. On D, E, F, G?

21 Q. Yes, that's right. You couldn't decide whether
22 you needed a pulpotomy based on the x-ray, is that
23 your testimony?

24 A. On D, E, F G, that's right.

25 Q. How do you know if the -- the pulp is vital.

1 Do you know what that means?

2 A. That's right.

3 MR. McPHILLIAMY: Objection. Beyond the
4 scope.

5 THE COURT: Overruled.

6 Q. If the pulp is not vital and a pulpotomy is not
7 proper, right?

8 A. That's not true.

9 Q. Can you do a pulpotomy properly and do a
10 pulpotomy on a pulp that's basically restorable?

11 A. If the tooth is restorable then you don't do
12 pulpotomy.

13 Q. Okay. And you can -- you need to look on an
14 x-ray to evaluate that, don't you?

15 A. You have to do the clinical and x-ray both
16 together.

17 Q. Uhm, you gave some testimony here towards the
18 end saying that there are long waiting lists, do you
19 remember that?

20 A. That's right.

21 Q. That's a waiting list to get into the operating
22 room, right?

23 A. In for general anesthesia these hospitals,
24 right. That's right.

25 Q. It's not to go to a pediatric dentist to have

1 two teeth pulled or to help with behavior management,
2 these places you're talking about that's not what
3 they're commenting on when they talk about waiting
4 lists, are they?

5 A. These are the places which would take those
6 insurances and they're waiting list.

7 Q. The waiting list is to get in the operating
8 room?

9 A. To get the treatment done when they could be
10 seen and get it -- get the work done.

11 Q. If the patient needs to be put under a general
12 anesthetic and needs to actually needs to be in the
13 operating room, right?

14 A. That's right.

15 Q. Okay. Mr. McPhilliomy asked you some questions
16 about PPP, under what -- your treatment was -- turns
17 out wasn't aimed at trying to increase PPP. Do you
18 remember that?

19 A. That's right.

20 Q. When you upped the treatment from Jeremy from
21 four fillings to four pulps and crowns, the PPP went
22 up like that, didn't it?

23 A. That was not in my mind.

24 Q. Well, whether it was in your mind or not that's
25 the effect of going from four \$50 procedures to four

1 \$215 procedures, isn't it.

2 MR. STEVENS: Objection. This was covered
3 on direct by this same attorney. Cost of each of
4 those things.

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

7 Q. You said, Doctor, that I hear you to say that
8 you always had -- always had a busy waiting room,
9 always busy at Syracuse? Is that what you said?

10 A. Yes. Yes.

11 Q. Do you remember the e-mails we were looking at
12 earlier?

13 MR. FRANKEL: Chuck, could we put up
14 101-F, please.

15 Q. This is from Dr. Khan. Lead dentist. You see
16 the subject matter, broken appointment at Syracuse.
17 We talked earlier about appointments -- how much you
18 were billing per day. I want to now focus on this
19 sentence that starts, we have always problem. Do you
20 remember, now this is 2006, that at Syracuse they were
21 actually according to Dr. Khan always had a problem
22 with hygiene in keeping the hygiene bay busy because
23 of broken appointments. Does that refresh your
24 memory?

25 A. I don't recall.

1 Q. It says, always been a problem. You don't
2 recall that?

3 A. Say so.

4 Q. Okay.

5 MR. FRANKEL: Look at 97, please.

6 Q. This is Dr. Randazzo a few months earlier,
7 she's writing to Mr. Routh, talking about we had the
8 same number of patients scheduled but now less are
9 showing up, especially hygiene. Does that refresh
10 your memory that you didn't always have a full waiting
11 room?

12 A. We have -- we were busy.

13 Q. Okay. Even in the wintertime?

14 A. I don't recall.

15 Q. All right. Sir, one last topic.

16 MR. FRANKEL: Can we look at the copy of
17 the 8/31.

18 Q. Dr. Aman, talking about this issue of whether
19 you did an exam or not. You said that LOE pertains to
20 emergencies; is that right?

21 A. Yes.

22 MR. McPHILLIAMY: Objection. Scope.

23 THE COURT: Overruled.

24 MR. STEVENS: Objection. Same question
25 was asked on direct and not gone into on my

1 questioning. I also object beyond the scope and
2 repetitive.

3 THE COURT: Well, overruled.

4 Q. If the LOE only deals with emergencies, Doctor,
5 then why would there be a reference to confirm a
6 treatment plan?

7 A. Say again.

8 Q. If this LOE, this limited oral exam, was aimed
9 at some emergency that came in and that's what really
10 was about, there wouldn't be a treatment plan to
11 confirm, would there? It's talking about the
12 treatment plan that already exists, the one that Dr.
13 Bonds wrote that you're suppose to do your own
14 examination to confirm it; isn't that true?

15 A. Limited oral exam is if the patient doesn't
16 come back in six months and doesn't get the complete
17 exam and comes down few months later and wants to
18 focus on one tooth so you can take picture of that and
19 decide what it was from before, I think this is what
20 it was referring to. But limited oral exam is just
21 for problem focused which the parent want to focus
22 that. That's what it is.

23 Q. What treatment plan were you confirming on
24 August 31st, 2006 -- or were you to confirm if you had
25 done that examination?

1 A. Could be from the past one.

2 Q. Yes, sir.

3 MR. FRANKEL: That's all I have. Thank
4 you.

5

6 RE CROSS-EXAMINATION

7 BY MR. McPHILLIAMY:

8 MR. McPHILLIAMY: Little larger.

9 Q. Dr. Aman, would you agree that on May 23, 2006,
10 as to tooth letter E, Dr. Bonds believed that a two
11 surface filling, mesial facial filling would be able
12 to restore that tooth. Agree with me on that?

13 A. Sorry. Say it again.

14 Q. May 23rd, would you agree that on that day, Dr.
15 Bonds believed that on tooth letter E, that a
16 two-surface MF, mesial facial filling would be
17 adequate to restore tooth letter E?

18 A. Agree.

19 Q. When you saw Jeremy some three months later,
20 you believe that he may need a pulpotomy and stainless
21 steel crown; is that correct?

22 A. That's right.

23 Q. In fact, at the end of NSP, there is a question
24 mark there?

25 A. That's right.

1 Q. Why did you write a question mark?

2 A. Because I wasn't sure it will need to do
3 pulpotomy or not.

4 Q. And as to tooth letter F, Dr. Bonds believed in
5 May of 2006, that he would need a -- Jeremy would need
6 a two-surface filling mesial facial filling to restore
7 tooth letter F; is that correct?

8 A. That's right.

9 MR. FRANKEL: Object to him leading the
10 witness again.

11 THE COURT: It's okay. We're going to let
12 him.

13 MR. McPHILLIAMY: Thank you.

14 Q. And three months later, again, when you
15 examined Jeremy, looked at the x-rays, you believe
16 that he may need a pulpotomy, stainless steel crown;
17 is that correct?

18 A. That's right.

19 Q. And was the same also be true of G, that in May
20 of 2006, Dr. Bonds believed that he needed a
21 one-surface filling to restore that tooth?

22 A. That's right.

23 Q. Three months later when you examined Jeremy,
24 you believed again that he may need a pulpotomy and
25 stainless steel crown?

1 A. That's right.

2 MR. McPHILLIAMY: Nothing further.

3 THE COURT: Thank you. Mr. Stevens?

4

5 RECCROSS-EXAMINATION

6 BY MR. STEVENS:

7 Q. Doctor, in addition to scheduled appointments,
8 in the waiting room area, were there also some groups
9 of patients that you were -- you refer to as walk-ins?

10 A. Yes.

11 Q. Would you tell the jury about that?

12 A. There were some patients who come as emergency.
13 They didn't have -- they had pain, sudden pain, and
14 they would come as walk-ins. They would call in and
15 come in. And there were some patients who were
16 already were our patients or did not come or follow
17 and they also called in. So sometimes new patients,
18 sometimes older patients walk-ins.

19 Q. Doctor, in terms of those e-mails that we just
20 saw that had to do with hygiene, you were not one of
21 the hygienests, correct?

22 A. Yes.

23 Q. You were one of the dentists, fair statement?

24 A. That's right.

25 MR. STEVENS: Thank you, Doctor.

1 THE COURT: Okay.

2 MR. McPHILLIAMY: One more question, Your
3 Honor.

4 THE COURT: Sure.

5

6 RE-RE-CROSS-EXAMINATION

7 BY MR. McPHILLIAMY:

8 Q. Doctor, when you believe that teeth letters E,
9 F and G, three months after Dr. Bonds saw Jeremy may
10 need pulpotomies and stainless steel crowns -- I'm
11 sorry, NS, New Smile crowns, did you actually have to
12 wait until you start to remove the decay to make a
13 determination as to whether or not he would need
14 pulpotomies?

15 A. Sorry say it again. Lost --

16 THE COURT: That question has been asked
17 and answered. Maybe not in that exact form, but
18 that testimony is come in from this Doctor.

19 MR. McPHILLIAMY: Objection sustained?

20 THE COURT: Sustained.

21 MR. McPHILLIAMY: Thank you.

22 THE COURT: Court's objection. Okay. You
23 may step down. We're going to take a break but it
24 is only going to be ten minutes. Okay.

25 (witness excused)

1 (Proceedings in recess at 2:57 p.m..)

2 THE COURT: Bring them in. All right.
3 Next witness?

4 MR. HIGGINS: Judge, the plaintiffs are
5 prepared to rest. We just have one final exhibit
6 which is Exhibit 1051-A. We have shown it to all
7 counsel. There is no objection. And these are
8 just the remainder of the notes from Dr. Taylor
9 for the 5/17/06 visit, so I offer those now.

10 THE COURT: 1051-A.

11 MR. HIGGINS: Right.

12 THE COURT: Exhibit 1051-A received and
13 the plaintiff rests. Thank you. All right.
14 Defense?

15 MR. FIRST: May we approach?

16 THE COURT: Yes, you may.

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

19 THE COURT: All right. Just a couple of
20 things. There were some additional exhibits that
21 were referenced during the videos yesterday which
22 are going to be received into evidence.

23 But so that we can start the witness,
24 plaintiff's are reserving their right to and they
25 brought that up before I forgot to put that on.

1 So the plaintiffs are introducing some more
2 exhibits, but we will probably do that tomorrow
3 morning.

4 Also, any motions by defendants are reserved
5 until a time when the jury is not present. Okay.
6 Let's go, Old FORBA.

7 MR. FIRST: Thank you, Your Honor. We
8 call Dr. George Cisaeros to the stand.

9
10 **GEORGE J. CISAEROS** , having been called as a
11 witness and being first duly sworn, testified as
12 follows:

13
14 DIRECT EXAMINATION

15 BY MR. FIRST:

16 Q. Good afternoon, Dr. Cisaeros. How are you
17 today?

18 A. Just wonderful.

19 Q. Okay. Can you tell the ladies and gentlemen
20 your name again for the record?

21 A. For the record?

22 Q. Yes.

23 A. Again? Spell it as well?

24 Q. Don't have to spell.

25 A. Okay. George J. Joseph Cisaeros.

1 Q. And where is your residence?

2 A. My residence is in Pelham Manor, New York.
3 It's Westchester County.

4 Q. And, Doctor, are you a licensed dentist in the
5 State of New York?

6 A. Yes, I am.

7 Q. I'd like to start by going into your background
8 a little starting first with your education. Could
9 you tell us about your education?

10 A. My education? I guess I should start at
11 college. I went to Manhattan College in Riverdale,
12 Bronx, New York. Was a biology major. Wanted to get
13 into dental school. I wanted to be an orthodontist.
14 Then when I got to dental school, kind of got turned
15 on to pediatric dentistry by of all people, a general
16 dentist, one of the instructors that taught there. So
17 from after four years at University of Pennsylvania
18 Dental School, I applied to pediatric dental residency
19 programs. And I wanted to and got in to the program
20 that appealed to me the most and this was at -- in
21 Boston at Childrens Hospital, it's the Harvard
22 program. So I spent -- was three-year program there,
23 and during my training there, I kind of got the bug to
24 be an orthodontist, again, with the help of my chair,
25 I kind of became Harvard's first dual-trained

1 pediatric dentist orthodontist, so I was enrolled in
2 both training programs simultaneously. It took five
3 years. I could have done it probably in less than
4 that but that's okay. It was a great experience.
5 Worked with the craniofacial team there. Did
6 research. Cleft pallet. Growth and development. And
7 then after my five years there, my first job -- go
8 into the job?

9 Q. Let me stop you there. Did you include your
10 fellowships in that description? I didn't hear you
11 mention that.

12 A. No.

13 Q. Can you describe your fellowships as well?

14 A. Well, I mean my -- your first year at
15 Children's Hospital, you're an intern. Second year
16 you're a resident. You know, intern, resident. You
17 get certifications for that. And then I did in my --
18 in my -- when it was in orthodontics, you're a
19 clinical fellow. And then also did masters research
20 at the same time. Masters degree as well. So...

21 Q. And, Doctor, you started to talk about your
22 first job. And why don't you tell the ladies and
23 gentlemen of the jury about your first job?

24 A. Say that again, I'm sorry.

25 Q. Will you tell the ladies and gentlemen of the

1 jury about your first job and where you went from
2 there?

3 A. From there. Okay. So after graduation I was
4 hired at Brookdale Medical Center which is in
5 Brooklyn, New York, to be their program director in
6 the pediatric dental residency program. I was there
7 for a little over a year and a half. And my research
8 mentor, Lenny Kaban, Dr. Leonard Kaban who is the oral
9 and maxillofacial chair at Harvard University today
10 told me about an opportunity up at Montefiore Medical
11 Center in the Bronx to work with the craniofacial team
12 there. So I was interviewed. There was a job
13 opportunity and that was in 1983. I joined the staff
14 there, and I was the only full-time pediatric dentist
15 and orthodontist at Montefiore at the time. And
16 things changed. During that time there, I helped out
17 with -- I took all kinds of patients. All, everybody,
18 pediatric dental patients as well as orthodontic
19 patients. I'm sorry, I'm not at all that comfortable
20 with talking about myself like this, so I apologize.
21 Any way, so and I was -- became the dental director of
22 the craniofacial team there. And for a period of
23 time, I was the program director of the pediatric
24 program at North Central Bronx, which is part of the
25 Montefiore Albert Einstein complex. Incidentally was

1 professor at of -- at Albert Einstein during this time
2 as well. During my time at Montefiore a few years
3 later I started an orthodontic training program there
4 from scratch while I was working with the
5 craniofacial. I -- you know, and during this time on
6 average probably two, three days a week the hospital
7 environment, the medical model teaching, and patient
8 care, private practice, there is kind of commingled.
9 You know, while you're training residents, you know,
10 you're working on patients, and you know it's a very
11 active clinical service and they're learning as they
12 are seeing what you're doing and you're observing what
13 they are doing so you're also practicing as well. And
14 my practice was a pediatric dental and orthodontics,
15 and I maintain my relationship with the pediatric
16 dental program there because I would be teaching the
17 residents from that program as well doing OR cases. I
18 don't know how much you -- you know sometimes you need
19 to take -- take care of the children. You need to
20 take them into the general anesthesia depending on --
21 upon the severity of the situation, so I did a lot of
22 that on a regular basis and teaching throughout that
23 time. So I was kind of working in both hats, both
24 worlds, and also working with the craniofacial with
25 surgeons and what and on the management of their care.

1 Cleft pallet patients and patients with severe
2 syndromes. And from there I was invited to come to
3 St. Barnabus, which is a neighboring hospital in the
4 Bronx to run both their postgraduate program in
5 pediatric dentistry and orthodontics simultaneously,
6 but they didn't have an orthodontic program there so I
7 started another orthodontic program there at St.
8 Barnabus. And then soon after that I was considered
9 for the chair position in orthodontics at New York
10 University College of Dentistry, and since that
11 time -- that's in 2001, you know, I started there
12 basically eleven days before September 11th, and been
13 there ever since. And during that time I served as
14 chair up until I get my time schedule. About 2010,
15 2011 I finished as chair, stepped down, and during
16 that -- you know, during that time, most of my
17 concentration, you know, was with my department of
18 orthodontics and working with my orthodontic residents
19 but because we had -- because of my background as a
20 pediatric dentist, I did a lot of teaching and
21 management of the care with the pediatric dental
22 residents. The old name for pediatric dentistry use
23 to be called pedodontics, so they shortened it to
24 pedo, sometimes so I apologize. Any way, so I would
25 teach them, help manage cases for them.

1 And let's see, during that time do research and what
2 not. But my practice I maintained in the Bronx. The
3 practice that I had been, you know, working on one day
4 a week up in the Bronx and work, and I'm still to this
5 day in the Bronx primarily. My own practice primarily
6 doing orthodontics. But working with the pediatric
7 dental residents that are there, seeing patients as
8 well and helping them, guiding them through, you know,
9 for their patients as well because they are there on
10 Fridays when I'm there. I think that brings me up to
11 now.

12 Q. Doctor, have you held academic appointments?

13 A. Yes, I have.

14 Q. Can you list them, please.

15 A. Well, I finished at Montefiore and Albert
16 Einstein as a full professor, and then when I came to
17 New York University, they gave me a full tenured
18 professorship. It's -- basically it's a -- they don't
19 give them out a lot. Basically tenured means you have
20 a job. Permanent tenure means I can go say hi to the
21 dean and tell him I don't like what he is doing, you
22 know, and it gives you academic freedom because you're
23 guaranteed a job. And so, you know, it's not
24 something that's given to a lot of people so I feel
25 very honored to have been able to be recognized like

1 that. Obligation, I'm sorry.

2 Q. Sure.

3 A. I talk a lot sometimes.

4 Q. That's okay. Doctor, are you board certified?

5 A. Yes, I am.

6 Q. What is board certification?

7 A. Can be a pain in the neck. I'm sorry. Board
8 certification is -- it's -- it's something that you --
9 that you chose to do, but it's really meant to be an
10 expression and a test of the level of excellence and
11 expertise that one, you know, can demonstrate. It's
12 American Board of Pediatric Dentistry and American
13 Board of Orthodontics allows, you know, appropriately
14 trained specialists to apply to them and basically you
15 have to demonstrate your -- it's a test. You know,
16 it's a pretty involved test, multiple parts. Have to
17 show your level of expertise and they look through
18 your cases and they examine you and show you cases,
19 you know, how would you handle it. Things like that.
20 It's quite an involved process. And it's, you know,
21 it's something that I wanted to do.

22 Q. Now, you board certified in -- by the American
23 Board of Pediatric Dentistry?

24 A. Yes, I am.

25 Q. Are you board certified by the American Board

1 of Orthodontics?

2 A. Yes, I am.

3 Q. So you are what is called double boarded?

4 A. Yes, I am double boarded.

5 Q. Now, Doctor, are you a member -- and I don't
6 want the -- you to list all of them -- of some of the
7 well-known organizations in your field?

8 A. You mean the American Academy of Pediatric
9 Dentistry and the American Association of
10 Orthodontists, yes, I am. And let me tell you a
11 little bit of what I have done in that area --

12 Q. With the American Academy of Pediatric?

13 A. -- of pediatric dentistry. I've served on the
14 board of trustees. I was -- feel pretty proud about
15 it because I was elected to serve by my constituents
16 in the northeast region because I lived in the
17 northeast and was elected to the American board I'm
18 not -- sorry -- strike that. The board of trustees,
19 the American Academy of Pediatric Dentistry and served
20 there for a period of time. Served on a number of,
21 you know, committees and days I was serving on
22 committees it was, you know, it was a research
23 committee which today I think it is called scientific
24 affairs, you know, and was the chair of that committee
25 for a period of time as well.

1 Stuff like that.

2 Q. And, Doctor, have you published?

3 A. I have published.

4 Q. Okay. Just could you estimate the number of
5 articles you have published?

6 A. Approximately forty jurat papers. In other
7 words, jurat means it's sent out to expert reviewers
8 and they, you know, review it for, you know,
9 scientific validity and, you know, approve it for --
10 for publications and stuff like that.

11 Q. Is that what is called also called peer
12 reviewed?

13 A. Yes. I'm sorry.

14 Q. Don't apologize.

15 A. That's okay.

16 Q. We've heard, I believe, in this courtroom about
17 that.

18 A. Peer review.

19 Q. Doctor, as you know, you've reviewed this case,
20 haven't you, the case of Jeremy Bohn?

21 A. Yes.

22 Q. The case involves as you know carious or
23 cavities and various dental restorations, including
24 fillings and crowns and pulpotomies and extractions?

25 A. Right.

1 Q. Can you give the jury some idea of your
2 background just in doing that kind of dentistry and
3 doing those procedures?

4 A. Well, most of my, you know, during my time in
5 my private practice at Montefiore, I was there for 17
6 years and at Brookdale, pretty much on average would
7 spend, you know, half my three days, you know, seeing
8 pediatric dental patients, and also going to the OR,
9 you know, where you get -- you do a lot of procedures
10 and you have to do them very quickly. And then as my
11 career moved on, as my practice aged, 'cause, you
12 know, a lot of my pediatric patients became my
13 orthodontic patients and they went on for -- on, you
14 know, to college and all that stuff, it's kind of neat
15 to see it happen, you know. Would instruct, you know,
16 just I guess I --

17 Q. If you're looking from a standpoint of
18 procedures or things, numbers and things like that?

19 A. How often?

20 Q. You have any idea?

21 A. It's hard to say. Certainly upwards of a 1,000
22 pulpotomies, crowns. I mean just you have to do
23 things fast and do them well. So it's I mean doing a
24 little less now. More supervising the students, you
25 know, at St. Barnabus, you know, helping them and you

1 know, when you're supervising, sometimes you have to
2 get in and help them out with it and show them,
3 demonstrate somethings so it's not something -- it's
4 not part of my practice one day a week. I'm primarily
5 in this as a orthodontist to be honest.

6 Q. Doctor, what percentage of your patients are
7 over the last few years are patients who are on
8 Medicaid?

9 A. Well, at St. Barnabus which is where my
10 practice is I'd have to estimate 60 to 80 percent of
11 the patient -- of my patients at St. Barnabus, it's
12 underserved community and in the Bronx.

13 Q. What do you mean when you say an undeserved
14 community?

15 A. Well, it's a term that the government -- it's a
16 term that the government utilizes to define areas in
17 the country that there is a high degree of need and
18 lack of, you know, lack of care so for individuals
19 like it's inner city. But may be close to a lot of
20 things, but this is -- they're still major poverty
21 and, you know, in the area. So that's what that means
22 underserved. And then at New York University the
23 patients that I'm involved in probably I increase this
24 percentage over the time I was there, very proud of
25 it, when I came there I was maybe 20 percent of the

1 patients were, you know, were Medicaid patients to now
2 it is about 50/50. Private patients and Medicaid we
3 service a lot from Brooklyn, from Harlem area and so,
4 you know, it's kind of something I've always done
5 so...

6 Q. Now, Doctor, did there come a time when I asked
7 you to review the case of Jeremy Bohn?

8 A. Yes.

9 Q. And what materials have you reviewed in
10 preparation for your review?

11 A. His -- the various medical dental charts. A
12 number of depositions. Even some trial testimony.
13 So...

14 Q. Did you look at the records?

15 A. Yes. Medical dental records.

16 Q. I'm sorry, I missed that. Doctor, based upon
17 your review, have you reached certain conclusions
18 about whether Jeremy Bohn's care conformed with good
19 and accepted dental practices?

20 A. Yes, I have.

21 Q. Now, before we go into that, I want to ask you
22 about Early Childhood Caries in a more general way.
23 We had some definitions of it. But let me just start
24 from that. What is Early Childhood Caries?

25 A. Going to ask me the definition of it?

1 Q. Yes, I am.

2 A. It -- basically it's sort of -- I mean, you
3 know, this is a -- the Early Childhood Caries is a
4 term that the -- kind of evolved. The academy has
5 kind of utilized. It took to kind of educate people
6 about the need. About the epidemic. The problem that
7 exists in some communities. And it's basically
8 individuals that have -- have a degree of decay. We
9 can talk about it. There is some charts I was given.

10 Q. Would it assist you to have a chart that you
11 can describe to the jury what you're pointing to?

12 A. What about the -- okay. Whatever. I'll do
13 whatever you want. Want me to stand up or --

14 Q. No. I think that will help.

15 A. The only reason I'm using this is because it's
16 been -- I don't want to laugh because I think it is
17 funny, it's just I have lived this, we use to call it
18 like milk bottle caries, you know, milk or bottle
19 early bottle caries. It's a syndrome that is
20 persisted man kind for, you know, for a long, long
21 time, you know, so in the interest of educating
22 people, communicating and, you know, getting across
23 the need to -- for governmental agencies and the like,
24 this term has come, you know, into play. And as it
25 says here, defined as the presence of one or more

1 decayed, missing or filled tooth surfaces in any
2 primary tooth in a child under the age of six. It's a
3 transmissible disease. I think you've heard some
4 testimony along that. What's really interesting about
5 this, you know, this disease is the mothers, you
6 know --

7 MR. FRANKEL: Excuse me, Your Honor. Can
8 we proceed by question and answer. I object.

9 THE COURT: Sure.

10 THE WITNESS: I'm sorry.

11 MR. FIRST: The question is about Early
12 Childhood Caries and I think he is being
13 responsive.

14 THE COURT: I think you asked what the
15 definition was and he read the definition. So you
16 know why don't you ask another question.

17 MR. FIRST: All right.

18 Q. You are talking about it being a transmissible
19 infectious disease?

20 A. Right.

21 Q. And what is that about -- what does that mean?

22 A. Well, it means that when the child comes into
23 the world, they are -- they have no -- they do not
24 have any -- they don't have the bug in them. The --
25 when I say "bug" I'm sorry, the bacteria and the

1 particular bacteria involved of note is the
2 streptococcus mutans, strep mutans. And that's --
3 that's transmitted through the -- through the mother
4 in particular. You know, right now, if you look at it
5 from a -- you know, it's probably the number -- the
6 most common disease on Earth for mankind. You know,
7 think about it. Probably it's because of that
8 everybody is -- a lot of people have it. But it's
9 pretty -- that's a pretty wild to think about that how
10 it's the number one disease simple cavity, but it can
11 have devastating effects.

12 Q. How does diet and hygiene have it's play in it?

13 A. Sorry?

14 Q. How does diet and hygiene have it's play?

15 MR. FRANKEL: I object, Your Honor.

16 Motion in limine.

17 THE COURT: Uhm, sustained.

18 Q. Well, Doctor, does diet play any role in it?

19 MR. FRANKEL: Same objection.

20 THE COURT: Sustained.

21 Q. What is -- what are the -- what if any role
22 does what somebody eats play in the development of
23 Early Childhood Caries generally so we understand it?

24 MR. FRANKEL: Same objection, Your Honor.

25 THE COURT: Same ruling.

1 Q. What is the progress of Early Childhood Caries
2 if it's left untreated? What happens with it?

3 A. Well, over time, I can tell you that it could
4 lead to, you know, I've put children in the hospital
5 because of severe facial swelling. I was involved in
6 a child when I was at Children's Hospital that had a
7 brain abscess that they cultured out, they took out
8 from the brain abscess strep mutans. You know,
9 intraoral. So it can be very, very devastating.
10 It's -- it can really on more routine basis
11 individuals that have a lot of decay it certainly can
12 affect how they -- well they eat, their overall
13 nutrition, and we showed this in -- in a study that we
14 did at Montefiore where we saw that we studied a
15 group --

16 MR. FRANKEL: Excuse me, sorry. Judge,
17 he's now going into hearsay. Some study that's
18 unidentified. I object.

19 THE COURT: Okay. Sustained.

20 Q. Now, Doctor, I want to talk to you about what
21 Early Childhood Caries looks like. Ask you to take a
22 look at what's been marked as Old FORBA's Exhibit
23 1067. And ask you to just for demonstrative purposes
24 to describe what Early Childhood Caries looks like?

25 A. Well, these are various stages of the

1 condition. Illustrating here. If you look right
2 along the gingiva, where the gingiva meets the tooth,
3 here you can see some whites, whitish lesions. Can
4 you see this? Okay. That's the earliest phase.

5 THE COURT: Doctor, I will ask you to
6 communicate with the lawyer and not with the jury.

7 THE WITNESS: Okay.

8 THE COURT: Not to ask them questions.

9 Q. You can talk.

10 A. I apologize.

11 Q. You can speak to the jury.

12 THE COURT: You can speak to them, but not
13 to ask them questions.

14 THE WITNESS: I understand. Sorry.

15 A. So you can see whitish lesions, and then here
16 you may have heard them called white spot lesions,
17 okay, but that's the earliest phase indication
18 clinically and it's really usually right around the
19 gingiva area.

20 Q. What's the gingiva area?

21 A. Gingiva is the gums and where they intersect
22 this is an area where the strep mutans seems to
23 collect a lot. Okay. And this one in particular
24 shows you -- this is a little bit more advanced. You
25 see this little brownish spot here, these are the

1 whites. This is the next phase. And you can see how
2 over time this type of process can develop further and
3 further and further over time.

4 Q. What's this -- what are these brownish looking
5 lesions that you see in the picture?

6 A. Well, that's decay. That's caries.

7 Q. Okay. Go on.

8 A. So and then as you can see how further, you
9 know, more destruction and eroding of the tooth
10 structure to the point where it is down, down to the
11 roots, the nubs or the roots if left untreated, I mean
12 this is giving you protection. Over time how it can
13 happen. How it -- how fast it happens, you know, how
14 severe it gets, how the pulp responds is really
15 dependent upon the individual. We are treating
16 individuals and sometimes, you know, for instance, I
17 been able to restore --

18 MR. FRANKEL: Excuse me, I object. We are
19 having narratives. I object to --

20 THE COURT: You answered the question.
21 Next question.

22 THE WITNESS: Thank you.

23 Q. Now, Doctor, I want to talk to you about where
24 Early Childhood Caries is found in the population. Is
25 there a board that would help describe that?

1 A. Sure. I think it's the risk assessment tool or
2 whatever you have.

3 Q. I show you Old FORBA 1011 for identification.
4 Now, what is that?

5 A. Well, this is a -- the American Academy's
6 Pediatric Dentistry Caries Risk Assessment.

7 MR. FRANKEL: Excuse me, is this in
8 evidence?

9 MR. FIRST: I'm going to offer it.

10 MR. HIGGINS: It's in front of the jury
11 now.

12 MR. FIRST: I'm going to offer it. You
13 want a small one to look at? You have it.

14 MR. FRANKEL: I know I have it. Uhm,
15 we're going to object to that on hearsay grounds,
16 Your Honor.

17 MR. FIRST: I believe they already said no
18 objection to that.

19 THE COURT: Wait a second. I have to
20 rule. I have to rule.

21 MR. FIRST: That's okay.

22 THE COURT: I think that's the next step.
23 Would counsellors approach. I haven't seen it.

24 (A discussion off the record at the Bench, all
25 counsel present.)

1 THE COURT: Objection withdrawn?

2 MR. FRANKEL: Yes, Your Honor.

3 MR. FIRST: I offer it. Is it received,
4 Your Honor?

5 THE COURT: What was that exhibit number
6 again?

7 MR. FIRST: 1011.

8 THE COURT: Exhibit 1011 received.

9 MR. FIRST: Thank you.

10 BY MR. FIRST: (Cont.)

11 Q. Dr. Cisaeros, can you tell us what this is?

12 A. It's an American Academy of Pediatric Dentistry
13 Risk Assessment Tool. This is again something that
14 the academy came up with to help educate and
15 communicate about caries. It's, you know, a whole
16 field of cariology, but this is looking for an
17 epidemiologically perspective which is how -- what are
18 the individuals that might be susceptible to it more
19 than others. And probably, you know, for the sake of
20 time, one of the most important aspects to this you
21 look at is a the higher risk patients, you know, tend
22 to come from the lower socioeconomic strata. And it's
23 a syndrome, and you can call it but it's a psycho --
24 I'm sorry, a socioeconomic syndrome, syndrome because
25 of a number of factors here. You know that -- that

1 such individuals don't have access to care that they
2 need. Don't have the educational background as well
3 to be exposed with it. There are dietary --

4 MR. FRANKEL: Excuse me, Your Honor. We
5 need to proceed -- object to this narrative again.

6 THE COURT: Okay. Uhm, I don't remember
7 what the question was but --

8 MR. FIRST: I'll ask him, Your Honor.
9 That's fine.

10 Q. You were describing one of the high risk
11 factors that's in --

12 A. Right.

13 Q. -- Exhibit 1011, and it has to do with
14 socioeconomic status. I guess my question to you is,
15 why is it that socio -- low socioeconomic status by
16 itself makes a child a high risk for caries? Why is
17 that?

18 A. Well, I mean part of it is access to care.
19 Access, lack of access to care, one, because just to
20 be flat out straight about it, economics. Be able to
21 afford it. And also the family life. You know, as
22 far as their diet and what their foods that they may
23 be fed or eating a lot of candy and things like that.

24 MR. FRANKEL: Your Honor, may we approach?

25 THE COURT: Yes.

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

3 THE COURT: Okay.

4 BY MR. FIRST: (Cont.)

5 Q. I'm sorry, I don't know whether you fully
6 answered the question. Did you finish your answer
7 before there was an objection or --

8 A. Well, it's just, you know, it's just opposite
9 ends of the spectrum because of access that you can be
10 able to pay for, to be able to be more aware of what,
11 you know, what dietary -- appropriate diet that they
12 should have and individuals with higher status
13 economics -- socioeconomic status tend to be less
14 effected by the disease so it's clearly, you know, a
15 disease of the poorer individuals.

16 Q. When you read this tool --

17 A. Right.

18 Q. -- how many of the high risk factors that are
19 listed do you need to be considered high risk?

20 A. One.

21 Q. One?

22 A. Yes.

23 Q. So you have caries teeth in the past twelve
24 months?

25 A. Right.

1 Q. This applies to children under six is that what
2 it is?

3 A. Yes.

4 Q. And having to do with certain types of diets --

5 A. Exactly.

6 Q. -- make you a high risk and socioeconomic
7 status can make you a high risk, any one of those
8 things --

9 A. Yes.

10 Q. -- as well as any of the other ones listed?
11 Now, Doctor, I think you have touched on it a little
12 bit. What are the consequences of Early Childhood
13 Caries when it is not treated promptly and properly?

14 A. Well, from poor -- call failure to thrive.
15 Technical term. You can --

16 MR. FRANKEL: Excuse me, Your Honor, this
17 is irrelevant. I'm going to object.

18 THE COURT: I don't think the question was
19 irrelevant. Overrule the objection.

20 Q. You can continue, Doctor.

21 A. I'm sorry.

22 Q. You can continue.

23 A. Consider? I mean continue. I got to get back
24 on track. It can affect the child's ability to grow.
25 I mean just to be -- to be able to be on a normal

1 growth curve, you know, so it can affect an
2 individual's overall development. It can affect --
3 that's partly because of it's difficult to eat. I
4 mean it can be a real problem. I can tell -- give you
5 examples if I -- if --

6 THE COURT: Next question.

7 Q. Doctor, any other consequences?

8 A. Well, lost school time, hospitalizations. A
9 lot of bad things can happen.

10 Q. Now, Doctor, there's been some testimony about
11 pediatric dentists and treatment of kids on Medicaid.
12 You teach a lot of pediatric residents?

13 A. Right.

14 Q. And is there access generally of Medicaid
15 children to pediatric dentists as a rule?

16 A. The access is out there. It's available, you
17 know, it's available. Certainly in the State of New
18 York, but I think the real issue is it's the pediatric
19 dentists per se. They're not seeing these patients.
20 You know, it's a -- it's a decision that they've made.
21 Probably for lots of reasons, you know. Certainly get
22 into that. But they're reasons, you know, in their
23 practice they're not seeing them to any degree so a
24 lot of institutions like New York University, St.
25 Barnabus, Montefiore, that's where these children are.

1 The irony is that here they are getting the training
2 on these children, yet in their practices they're not
3 seeing them. That goes for a lot of specialties.
4 It's not just pediatric dentists.

5 Q. Doctor, in terms of kids being treated by
6 general dentists, what percentage, if you know, of
7 kids who are treated by dentists are treated by
8 general dentists as opposed to pediatrics?

9 A. Kids in general? Children in general?

10 Q. Yeah.

11 A. Most of them even to this day, you know, are
12 treated by the general dentists.

13 MR. FIRST: Your Honor, may I approach? I
14 think it would be a good breaking point. New
15 subject.

16 THE COURT: All right. Can I just see
17 counsellors for a minute, though.

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

20 THE COURT: All right. We're going to
21 break for the day. Tomorrow we are going to start
22 at 9:30, instead of nine o'clock. Have a great
23 night.

24 Don't talk about the case with anybody else
25 and we'll see you. Actually, can counsellors

1 approach one more time. Sorry.

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

4 THE COURT: Okay. Thank you. 9:30. I
5 did want to let you know that it looks like in
6 terms of when your service will be done probably
7 Wednesday would be the date that we are completed
8 with the trial so I want to give you that heads
9 up. Okay. Thank you.

10 (Jury excused for the day at 3:55 p.m..)

11 THE COURT: Okay. All right. Doctor, you
12 can step down. But I do want to say one thing on
13 the record, I would like you to try to just be a
14 little bit more responsive to the --

15 THE WITNESS: Stop being -- talking too
16 much.

17 THE COURT: You're being a professor and I
18 get that, but if you wouldn't mind just trying to
19 answer the questions. I don't want to cut you
20 off. You are here to testify.

21 THE WITNESS: I appreciate it.

22 THE COURT: But we don't need lectures on
23 everything.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 THE WITNESS: Thanks, boss. I'll do my
2 best.

3 THE COURT: Counsel, before we break,
4 we're going to go over the exhibits. There was
5 one more thing I was --

6 MR. LEYENDECKER: Your Honor, the
7 plaintiffs would offer Exhibits 281, to the extent
8 these have not been admitted, these are the
9 exhibits played with the Smith tape, 281, 322, 76,
10 324, 156, 158, 325 and 166. Plaintiffs would
11 offer those exhibits, Your Honor.

12 MR. HULSLANDER: We object to all of
13 those, especially 281 because it's inflammatory.

14 THE COURT: I already ruled on 281.

15 MR. HULSLANDER: I know you already let it
16 in, but they are offered so I'm just stating our
17 objection.

18 THE COURT: Okay.

19 MR. STEVENS: Join please.

20 MR. LEYENDECKER: I said to the extent
21 they're not already admitted.

22 MR. HULSLANDER: I already objected to
23 281.

24 THE COURT: No objection to any of the
25 other ones. They are all received.

1 MR. STEVENS: I think he said objections.

2 MR. HULSLANDER: I'm objecting to every
3 one of these offering as irrelevant. You have
4 already -- you are letting them in, right?

5 THE COURT: I just --

6 MR. HULSLANDER: I thought you already let
7 them in.

8 MR. STEVENS: I'm joining in all those
9 objections.

10 THE COURT: They're in.

11 MR. FIRST: I join in the objections.

12 THE COURT: No, they didn't.

13 MR. HULSLANDER: He showed them to the
14 jury.

15 THE COURT: No, they didn't.

16 MR. HULSLANDER: There are three others.

17 MR. LEYENDECKER: We didn't show any in
18 the Lindley tape. What she let in was 271, 279,
19 the 280. We didn't show 279 in the Smith tape.

20 MR. HULSLANDER: Right.

21 MR. LEYENDECKER: The other ones she let
22 in. That's right. She is receiving them.

23 THE COURT: You going back to the
24 hospital?

25 MR. HULSLANDER: No.

1 MR. STEVENS: Waiting, Your Honor 'til
2 morning.

3 THE COURT: Okay. They're going to be
4 short, though.

5 MR. STEVENS: Yes, we will make sure they
6 are short.

7 (Proceedings in recess at 4:00 p.m..)

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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 3, 2013.

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