

**DE-IDENTIFIED PRE-TRIAL DEPOSITION TESTIMONY
OF A GENERAL DENTIST IN A CASE INVOLVING THE
EXTRACTION OF 2 PERMANENT TEETH INSTEAD OF
2 BABY TEETH**

1
2 SUPREME COURT OF THE STATE OF NEW YORK 1
3 COUNTY OF
4 -----X
5 as M/N/G OF
6 , an infant, and
7 , Individually,
8 Plaintiff,
9 -against-
10 Index No.
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17 D.D.S., P.C.
18 Defendants.
19 -----X
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10002
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2 10:00 a.m.
3 EXAMINATION BEFORE TRIAL of
4 , D.D.S., the Defendant herein,
5 taken by the Plaintiffs, pursuant to Article
6 31 of the Civil Practice Law and Rules of
7 Testimony and Order, held at the
8 above-mentioned time and place, before
9 , Notary Public of the State of New
10 York.
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2 A P P E A R A N C E S : 2
3
4 THE LAW OFFICE OF GERALD M. OGINSKI
5 Attorney for the Plaintiff
6 25 Great Neck Road
7 Great Neck, New York 11021
8
9 Attorney for the Defendant
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12 Attorneys for the Defendant,
13 , P.C.
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13 BY:
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STIPULATIONS

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IT IS HEREBY STIPULATED, by and between
the attorneys for the respective parties
hereto, that:

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All rights provided by the C.P.L.R.,
and Part 221 of the Uniform Rules for the
Conduct of Depositions, including the right
to object to any question, except as to

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form, or to move to strike any testimony
at this examination is reserved; and in
addition, the failure to object to any question
or to move to strike any testimony at this
examination shall not be a bar or waiver to
make such motion at, and is reserved to, the
trial of this action.

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This deposition may be sworn to by the witness
being examined before a Notary Public other than
the Notary Public before whom this
examination was begun, but the failure to do so
or to return the original of this deposition
to counsel, shall not be deemed a waiver of
the rights provided by Rule 3116 of the C.P.L.R.,
and shall be controlled thereby.

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deposition is waived.

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IT IS FURTHER STIPULATED, a copy of this
examination shall be furnished to the
attorney for the witness being examined
without charge.

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1 , D.D.S. 5

2
3 after having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. OGINSKI:

8 Q State your name for the record,
9 please?

10 A

11 Q State your address, please.

12 A Business address is

13

14

15 MR. OGINSKI: Mark this,
16 please.

17 (Plaintiff's Exhibit 1, Panorex
18 X-rays, were marked for
19 identification.)

20 MR. OGINSKI: Mark this,
21 please.

22 (Plaintiff's Exhibits 2 and 3,
23 Documents, were marked for
24 identification.)

25 MR. : We'll stipulate

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1 , D.D.S. 6

2 to accept service.

3 MR. OGINSKI: I was going to
4 ask you that.

5 MR. : I know.

6 MR. OGINSKI: Good morning,
7 Doctor.

8 THE WITNESS: Good morning.

9 Q Did you remove
10 's lower canines?

11 A Yes.

12 Q That was done on

13 ?

14 A Correct.

15 Q Why did you remove the canines
16 on her lower jaw?

17 A Well, I reviewed the X-ray this
18 morning and I mean it was a long time ago so
19 I don't know exactly what was going through
20 my head at the time, but from reviewing the
21 X-rays this morning, it appears that the
22 canines, at that time, I believe were
23 children's canines.

24 Q What was the purpose of
25 extracting any of those teeth that morning?

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1 , D.D.S. 7

2 A To gain space for orthodontic
3 movement of teeth.
4 Q Did you learn after extracting
5 those teeth they were not baby teeth; they
6 were, in fact, permanent teeth?
7 MR. : Did he learn
8 that before the lawsuit?
9 MR. OGINSKI: Yes.
10 A No.
11 Q What are supernumerary teeth?
12 A Supernumerary teeth are extra
13 teeth that most people don't have that some
14 people do.
15 Q How do you distinguish
16 supernumerary teeth from a normal regular
17 tooth?
18 A Generally by location but it
19 could be very difficult to distinguish.
20 Q Is this something that can be
21 distinguished visually by grossly looking at
22 teeth?
23 A Well, you have to distinguish
24 them on an X-ray and on an X-ray, you know,
25 a lot of teeth look very similar.

0008

1 , D.D.S. 8
2 Q Are there instances where
3 supernumerary teeth are going in the
4 incorrect position or incorrect direction?
5 A It could be.
6 Q What is a deciduous tooth?
7 A I think that's the second --
8 that's a permanent tooth.
9 Q What are cuspids, Doctor?
10 A Canines.
11 Q What are bicuspid?
12 A Premolars.
13 Q And are those typically what
14 you would call baby teeth?
15 MR. : Which ones?
16 Q Bicuspid.
17 MR. : I just want to
18 object to form. Can you put the
19 whole thing in one question?
20 MR. OGINSKI: Sure.
21 Q Can you have bicuspid baby
22 teeth?
23 A No.
24 Q Does the word bicuspid refer to
25 adult teeth?

0009

1 , D.D.S. 9
2 A Yes.
3 Q What are canine teeth?
4 A Just like any other tooth, it's
5 just they are called canine because they are
6 in a specific location. They have a
7 specific function and appearance in the

8 mouth.
9 Q And in terms of an adult mouth,
10 can you tell me the numbers of the teeth
11 that canines would represent?
12 A Which numbering system?
13 Q Whatever you use, Doctor?
14 A Six, 11, 22 and 27.
15 Q Six, 11, 22 and --
16 A Twenty-seven.
17 Q Is there a particular name for
18 that numbering system that you just used?
19 A Yeah, there is. I don't recall
20 though.
21 Q What other systems are there
22 besides the one that you just described?
23 A There's also other numbering
24 systems that you number from here over
25 (indicating).

0010

1 , D.D.S. 10
2 MR. : Indicating the
3 front.
4 A Yeah, this would be one, two
5 three; one, two, three; one, two, three; one
6 two three.
7 MR. : The witness is
8 indicating from the center of the
9 mouth you would start the number
10 system which would go in either
11 direction out and increasing
12 numbers.
13 A Upper left three, you know,
14 upper right three, lower right three.
15 Q Which system do you tend to
16 use?
17 A The first system.
18 Q And how many adult teeth are
19 there generally?
20 A Thirty-two.
21 Q And how many baby teeth are
22 there generally?
23 A Twenty.
24 Q And when you're identifying
25 baby teeth, how do you identify them in

0011

1 , D.D.S. 11
2 terms of number, letter or something else?
3 A Baby teeth generally are
4 lettered whereas adult teeth are generally
5 numbers.
6 Q What are premolars, Doctor?
7 A It's just another type of tooth
8 in the mouth.
9 Q Where are those premolars
10 located? You can tell me based upon your
11 numbering that you described.
12 A That would be four, five, 12,
13 13, 20, 21, 28, 29.

14 Q What is the maxilla?
15 A Upper jaw.
16 Q And the mandible?
17 A Lower jaw.
18 Q The first molar is where within
19 the mouth?
20 A It is from the back the third
21 tooth in and from the front the six tooth
22 back.
23 Q And is that true of baby teeth
24 as well as adult teeth?
25 A The first molar?

0012

1 , D.D.S. 12
2 Q Yes.
3 A No.
4 Q And for baby teeth, where is
5 the first molar?
6 A The first molar is directly
7 behind the baby canine.
8 Q In an adult where is that first
9 molar located?
10 A It's behind the premolars.
11 Q The cuspid is where?
12 A In front the premolars.
13 Q And what number teeth would you
14 assign them for an adult?
15 A The cuspids?
16 Q Yes.
17 A Didn't I give you that already?
18 Q You talked about the canine and
19 you talked about the premolars?
20 A The canines and the cuspids are
21 the same.
22 Q And the premolars and the
23 bicuspid you said are the same?
24 A Yes.
25 Q Now, would you agree, Doctor,

0013

1 , D.D.S. 13
2 that a dentist who's licensed to practice in
3 the State of New York should be able to
4 recognize the difference between a molar and
5 a cuspid?
6 MR. : Objection to the
7 form. I think it's very vague.
8 MR. OGINSKI: I'll rephrase it.
9 Q All of my questions are going
10 to relate to the time period of
11 , okay --
12 A Yes.
13 Q -- unless I indicate otherwise.
14 In , you were
15 licensed to practice dentistry in the State
16 of New York?
17 A Right.
18 Q For how long have you been in
19 practice approximately?

20 A . Private practice
21 maybe .
22 Q Now, on the date that you saw
23 on that was
24 the first date that you saw her, correct?
25 A As far as I can remember.

0014

1 , D.D.S. 14
2 Q You had never seen or treated
3 her before that date?
4 A Not according to the chart
5 notes.
6 Q How was it that you came to
7 treat her on that date?
8 A She had a referral from an
9 orthodontist.
10 Q And the office where you were
11 working that was ?
12 A Yes.
13 Q And what was your relationship
14 with at that time?
15 Were you employed? Were you an owner? Were
16 you a shareholder? What was your
17 affiliation?
18 A Employee.
19 Q And who employed you? In other
20 words, who did you have your agreement with,
21 as far as you know?
22 MR. : Objection to
23 form.
24 A What agreement?
25 Q Who hired you?

0015

1 , D.D.S. 15
2 A
3 Q Who's
4 A I guess he's like an office
5 manager there.
6 Q And did you have a written
7 contract?
8 A I don't remember.
9 Q Did you receive a check from
10 on a regular basis?
11 A Yes.
12 Q Did they take taxes out of your
13 check?
14 A Yes, I think so.
15 Q And if you wanted to take
16 vacation time, did you have to square it
17 away with the office to make sure that that
18 time was good for them and for you?
19 A I believe so.
20 Q Was your name on the door
21 anywhere?
22 A No.
23 Q Was your name on any of the
24 billing statements?
25 A I have no idea. I don't think

0016

1 , D.D.S. 16

2 so.

3 Q Was your name on any of the
4 insurance documents sent to various health
5 insurance companies for payment?

6 A It's possible.

7 Q Anything that you recall as you
8 sit here today?

9 A It was a long time ago. I was
10 working in three offices at the time.
11 Honestly, I only worked there one or two
12 times a week. I don't remember.

13 Q Did you have business cards
14 made up with your name on it at
15 ?

16 A I don't think so.

17 Q Were you required to obtain
18 your own malpractice insurance?

19 A Yes.

20 MR. : Just note my
21 objection to the last question in
22 terms of its use at trial.

23 Q Before examining
24 , did you review her chart?

25 A Generally, especially before

0017

1 , D.D.S. 17

2 any surgical treatment, I'll always go over
3 the medical history. According to my notes
4 it says I did review.

5 Q Did you learn that this was a
6 patient of Dr. ?

7 A Well, I see several different
8 handwritings in the chart so I don't know
9 who, you know, generally saw her. But, you
10 know, there's chart entries from several
11 different people here. I don't know that
12 they are all his; that it was only his
13 patient. It's hard to tell.

14 Q When and her mom came
15 in on , did they
16 specifically ask for you as their dentist?

17 A I don't recall.

18 Q In other words, on the day that
19 you were working, how was it that you
20 treated her instead of any of the dentists
21 who had treated her before?

22 A Maybe because there may have
23 not been any other dentist in the office
24 that day.

25 Q Doctor, can you have deciduous

0018

1 , D.D.S. 18

2 supernumerary teeth?

3 A Yes.

4 Q How would you be able to
5 distinguish between deciduous supernumerary

6 teeth and adult supernumerary teeth?
7 A I thought deciduous was baby
8 teeth.
9 Q You had mentioned that they
10 were permanent.
11 A Well, adult teeth are permanent
12 as well so deciduous are also adult teeth.
13 Q Let me rephrase it. Are there
14 supernumerary baby teeth?
15 A There could be, sure.
16 Q How do you distinguish between
17 a supernumerary baby tooth as opposed to a
18 supernumerary adult tooth?
19 A I'm not sure.
20 Q You are a general dentist,
21 correct?
22 A Yes.
23 Q You are not an oral surgeon?
24 A Nope.
25 Q As far as you know, Doctor, an

0019

1 , D.D.S. 19
2 oral surgeon continues on, does training
3 after school?
4 MR. : Objection. I
5 don't know that's in the scope of
6 his knowledge.
7 MR. OGINSKI: Whatever his
8 knowledge is.
9 Q Based upon your information?
10 MR. : Over my
11 objection, if you know. Do you know
12 what training oral surgeons receive?
13 THE WITNESS: Yes.
14 MR. : Okay. Over my
15 objection.
16 Q How much additional training do
17 they receive typically after school?
18 A Well, academically there is
19 four and six-year programs. In the clinics,
20 I believe both certifications receive
21 four years training so it's a six or
22 four-year program.
23 Q For schooling and then some
24 type of additional training after that?
25 A No. school is

0020

1 , D.D.S. 20
2 four years. To become an oral surgeon you
3 have an additional four to six years.
4 Q In addition to the school?
5 A Yes.
6 Q As a general dentist,
7 typically, after graduating school is
8 four years, correct?
9 A is four years.
10 Q And some dentists go on to do
11 some type of residency?

12 A Yes.
13 Q You did a one-year residency,
14 correct?
15 A A little over a year.
16 Q That was at Hospital?
17 A Correct.
18 Q You did not do any type of
19 fellowship, correct?
20 A I did do a fellowship in
21 implant dentistry but this was after this
22 case. It's recent.
23 Q You did not do any residency in
24 oral surgery?
25 A It was a general practice

0021

1 , D.D.S. 21
2 residency but it was highly geared towards
3 oral surgery.
4 Q Would you agree, Doctor, that
5 an oral surgeon residency is different than
6 an general residency, correct?
7 A Yes.
8 Q In the course of your general
9 practice, you perform extractions,
10 correct?
11 A Yes.
12 Q When do you send a patient out
13 to an oral surgeon to have extractions done?
14 A When there's risk involved of
15 nerve damage, medical history risk. You
16 know, if there's extenuating circumstances
17 based on their medical history; heeling
18 problems. Not that often.
19 Q How would you know if there was
20 a possible nerve involvement in anticipation
21 of performing an extraction?
22 A From an X-ray you can see the
23 proximity of the tooth to a nerve.
24 Q And what would lead you, at
25 that point, after evaluating an X-ray and

0022

1 , D.D.S. 22
2 realizing that there's something at risk or
3 there's a risk of doing this, that you then
4 send a patient out to an oral surgeon?
5 MR. : Objection to
6 form. Can you just read it back?
7 MR. OGINSKI: I'll rephrase it.
8 Q Explain to me why you would
9 send a patient to an oral surgeon for an
10 extraction as opposed to you doing it?
11 MR. : In addition to
12 what he already said because he said
13 if a film showed that it was close
14 to a nerve, the root was close to a
15 nerve.
16 MR. OGINSKI: Okay.
17 MR. : I don't know if

18 that's his only reason he would.

19 Q Under those circumstances, why
20 would you send a patient to a oral surgeon
21 as opposed to you doing it?

22 A Difficulty and risk.

23 Q What would the oral surgeon be
24 able to do that you might not be able to do?

25 A Probably nothing to be honest

0023

1 , D.D.S. 23

2 with you. I'm an excellent surgeon but when
3 it comes to risk, oral surgeons have much
4 better malpractice insurance. Or if I think
5 that something could happen, whether it was
6 going to happen in my hands or his hands, it
7 would happen either way, but he is more
8 equipped to deal with the situation if it
9 does happen because he has that extra
10 training that I don't have.

11 MR. : I'm going to
12 make a motion at the time of trial
13 to take out those portions that
14 refer to malpractice insurance;
15 otherwise that's a good stand.

16 Q Is it your opinion, Doctor,
17 that in general most oral surgeons have more
18 experience dealing with extractions than
19 general dentists?

20 A Some.

21 Q How close does the nerve need
22 to be to the root or to the tooth in order
23 for you to make that decision about should I
24 do it or should I send it out?

25 MR. : Objection. Can

0024

1 , D.D.S. 24

2 you just read that back.

3 (Whereupon, the requested
4 portion of the transcript was read
5 back by the court reporter.)

6 MR. : Objection to
7 form.

8 A It's not a matter of
9 measurement. I make these decisions based
10 on so many factors. It's not just where,
11 you know, the nerve is. I've taken teeth
12 out that were very close to the nerve.

13 There's a lot of factors that
14 play into it; how the tooth is impacted.
15 You know, the patient, if they're a patient
16 that's nervous they need to be knocked out
17 for the procedure, I don't knock patients
18 out. So, you know, all those factors play
19 into it, not just the proximity of the
20 nerve. Patient management as well because
21 of, you know, anesthesia that I don't do.

22 Q Now, when came into
23 your office, did you see that there was a

24 request from her orthodontist to remove
25 specific teeth?

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1 , D.D.S. 25

2 A Yes.

3 Q And do you see that note in the
4 chart that you have in front of you which is
5 a photocopy?

6 A Yes.

7 Q Can you show that to me,
8 please.

9 A (Complying.)

10 Q That's the letter dated
11 from Dr. ,

12 correct?

13 A Yes.

14 Q And that's addressed to Dr.

15 ?

16 A Yes.

17 Q Did you see a consult letter
18 from Dr. to Dr. about

19 his examination of the patient around

20 ?

21 MR. : Are you asking
22 if it's in this group of documents
23 here?

24 MR. OGINSKI: No. I'm going to
25 rephrase it.

0026

1 , D.D.S. 26

2 Q When you saw the patient on
3 , in addition to this letter,
4 did you see another letter from Dr.
5 to Dr. ?

6 MR. : Do you have a
7 recollection of it?

8 A Honestly, I don't remember.
9 But, you know, I'm not sure.

10 MR. : Did you see any
11 documents that were not part of the
12 chart? Did you have any other
13 documents outside of the chart?

14 THE WITNESS: Not that I know.

15 MR. : Counsel, is this
16 a full chart? Are we saying that
17 this is a full chart?

18 MR. : That's my
19 understanding.

20 MR. : We have
21 Plaintiff's Exhibit 3 dated
22 . It is one, two,
23 three, four, five, six pages that
24 are stapled together and it's been
25 indicated that this is the full

0027

1 , D.D.S. 27

2 chart or copy of the full chart and
3 counsel now will be providing

4 something which --

5 Q Doctor, I'm going to show you a
6 letter dated that is from
7 Dr. to Dr. . Have you
8 ever seen that letter before?

9 A I'm not sure.

10 Q That letter discusses his
11 examination and evaluation of the patient
12 from an orthodontic standpoint, correct?

13 A I'm sorry?

14 Q That letter that you you've
15 just looked at that your attorney is also
16 looking at, that discusses Dr. 's
17 examination and evaluation of the patient
18 from an orthodontist standpoint?

19 A Yes.

20 Q It also makes recommendations
21 in there in order to accomplish his
22 orthodontic treatment of what needs to be
23 done from a general perspective,
24 correct?

25 In other words, he makes

0028

1 , D.D.S. 28
2 recommendations that certain teeth need to
3 be extracted?

4 A Yes.

5 Q Doctor, if you can take a look
6 at the letter that you've shown me that
7 appears in the chart of the
8 and these recommendations that he
9 makes compared to the letter that I've just
10 shown you about the orthodontic treatment
11 and evaluation, is it your understanding
12 just looking at the two that they are the
13 same? I'm asking specifically about the
14 teeth that he is recommending be removed.

15 A Yes.

16 MR. OGINSKI: Mark this.

17 (Plaintiff's Exhibit 4, Letter,
18 was marked for identification.)

19 A I made a mistake in the wording
20 of a deciduous tooth versus a permanent.

21 Q Tell me, Doctor, what is a
22 deciduous tooth?

23 A A baby tooth.

24 Q Is there any way for you to
25 make a distinction or determine the

0029

1 , D.D.S. 29
2 difference between a baby tooth and an adult
3 tooth?

4 A Yes.

5 Q How do you clinically make the
6 distinction?

7 A Location, age of the patient,
8 X-ray, evaluation.

9 Q Now, when you extract a tooth

10 are there instances where you will need to
11 cut the bone or create a gum flap?

12 A Yes.

13 Q Are there instances where you
14 need to suture the patient?

15 A Yes.

16 Q Would you agree, Doctor, that
17 if your intent is to remove a baby tooth and
18 instead you removed an adult tooth that
19 would be a departure from good and accepted
20 care?

21 MR. : Note my
22 objection to the form. You're
23 asking for a legal conclusion.

24 Q Well, Doctor, if you intend to
25 remove a baby tooth and for whatever reason

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1 , D.D.S. 30
2 instead don't remove a baby tooth but
3 instead remove a permanent tooth, would you
4 agree that would be a departure from good
5 and accepted care?

6 MR. : Again, my
7 objection to form. In this
8 circumstance? In this situation?

9 MR. OGINSKI: In general.

10 MR. : Can you answer
11 that in general? Is that an answer
12 you can give as a general
13 proposition?

14 A You mean to pull a baby tooth
15 and you pull a permanent tooth, is that
16 what?

17 Q Is that a departure from good
18 care?

19 MR. : Note my
20 objection to the form.

21 A I guess, yes.

22 Q Tell me why.

23 A Because when you pull a tooth
24 you should pull the proper tooth, you know.

25 Q Now, when Dr. made

0031

1 , D.D.S. 31
2 specific requests about teeth that he was
3 asking to have extracted, this was not your
4 treatment plan, correct, this was his
5 request and Dr. 's treatment plan
6 correct?

7 A Yes.

8 Q You would agree, Doctor, that
9 before extracting any of those teeth that
10 you correctly identify which teeth those
11 were before performing the extraction,
12 correct?

13 A Yes.

14 Q Did you have a conversation
15 with the patient, with and her mom,

16 before doing any extractions about whether
17 to send her to an oral surgeon to have these
18 extractions done?

19 A I don't recall.

20 Q Tell me why you chose to
21 perform extractions on this patient on
22 instead of sending her to an
23 oral surgeon?

24 MR. : Note my
25 objection to the form. Over

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1 , D.D.S. 32

2 objection you can respond.

3 A I've pulled tens of thousands
4 of teeth. These appeared to be, you know,
5 simple extractions. They did not seem
6 complicated in any way or risky.

7 Q As part of your discussion with
8 the patient or with the patient's parent or
9 mother in this case -- Let me rephrase.

10 Did you have a discussion with
11 and her mom that they have the
12 option to go to an oral surgeon to have
13 these extractions done?

14 A I don't recall.

15 Q When you evaluate and determine
16 that the treatment plan to extract teeth are
17 what you said simple, relatively
18 straightforward, would you still have a
19 discussion with the patient or the patient's
20 parent about an option of going to an oral
21 surgeon?

22 A Could you repeat that?

23 Q Under what circumstances do you
24 discuss with the patient or the patient's
25 parent the option of going to an oral

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1 , D.D.S. 33

2 surgeon to have extractions done?

3 A When I feel that the extraction
4 is out of my realm of dentistry.

5 Q You felt that was not something
6 out of the realm of what you could
7 accomplish, correct?

8 A Correct.

9 Q Would it be fair to say based
10 upon that, that it would be unlikely that
11 you would have had a discussion with the mom
12 about going to an oral surgeon to have the
13 extractions done?

14 A I suppose. I'm not a hundred
15 percent.

16 Q Okay. If there were any teeth
17 that Dr. was asking to be
18 extracted that you were unsure where they
19 were anatomically, would you agree it would
20 be good practice not to pull a tooth
21 you were unsure whether or not it was the

22 correct tooth?
23 A I would never pull a tooth if I
24 was unsure of what it was.

25 Q What would your options be if,
0034

1 , D.D.S. 34
2 in fact, you were unsure about anatomically
3 where that tooth was, whether it was the
4 correct tooth that was being asked to be
5 removed?

6 MR. : This is
7 hypothetical so I guess you should
8 phrase it as one because he stated
9 that was not what he believed it to
10 be at the time. Hypothetically.

11 Q If a doctor asked you to remove
12 a particular tooth and you were unclear
13 whether or not it was the correct tooth that
14 you were about to extract, what would your
15 options be at that point?

16 A You're saying that if someone
17 asked me to pull a tooth I was unsure? I'd
18 probably call the doctor.

19 Q Why?

20 A Just to verify, I guess, which
21 tooth he wants me to pull.

22 Q Now, Doctor, if you remove a
23 permanent tooth, you can't simply put it
24 back in if you learned it's the wrong tooth,
25 correct?

0035
1 , D.D.S. 35

2 A You could immediately. But
3 once it's been out for a certain amount of
4 time, you can't.

5 Q What is a certain amount of
6 time?

7 A Depends. You know, it has to
8 be under a half hour. Normally, if you
9 remove a tooth, it needs to go back in
10 within a half hour. I think anything over
11 two hours the odds stop dropping
12 drastically.

13 Q Now, you told me on the first
14 question I asked you and you said that you
15 had removed 's canine teeth on her
16 lower jaw, correct?

17 A Correct.

18 Q That would be on both the right
19 and the left?

20 A Yes.

21 Q If you look at Dr. 's
22 letter from , where within
23 that request does it indicate that he would
24 like those two canine teeth in the lower jaw
25 removed?

0036
1 , D.D.S. 36

2 A It doesn't.

3 Q Can you explain to me if Dr.
4 did not request that those teeth
5 be removed why you chose to remove those
6 particular teeth?

7 A I mistook the permanent canines
8 for the deciduous canines due to the
9 positioning on the X-ray.

10 Q Would you agree, Doctor, that
11 by removing permanent canines when instead
12 your intention was to remove deciduous
13 canines, that that would be a departure from
14 good and accepted care?

15 A Sorry?

16 MR. : Over my
17 objection you can answer.

18 Q Would you agree, Doctor, that
19 by removing the permanent canines when, in
20 fact, your intention was to remove the
21 deciduous canines, that would be a departure
22 from good and accepted care?

23 MR. : Again, objection
24 to form.

25 A Yeah, I guess.

0037

1 , D.D.S. 37

2 Q Tell me what is the implication
3 to the patient for removing permanent teeth
4 when, in fact, you were intending to remove
5 baby teeth?

6 MR. : For this
7 patient?

8 MR. OGINSKI: Yes.

9 MR. : What the
10 ultimate result would be; is that
11 what you're asking?

12 MR. OGINSKI: Not yet.

13 Q The fact that you removed
14 permanent teeth when the permanent teeth
15 were not intended to be removed, what's the
16 implication from a general
17 standpoint?

18 A Well, typically, children at
19 her age have permanent teeth removed all the
20 time for orthodontic space. I think I more
21 commonly remove permanent teeth to gain
22 space orthodontically than I do baby teeth.

23 Q If the permanent canines are
24 removed, doesn't that then leave a
25 significant gap in the lower jaw?

0038

1 , D.D.S. 38

2 A It depends on the space. What
3 I'm trying to say is permanent teeth are
4 removed every day to make space so that
5 teeth can be aligned properly
6 orthodontically.

7 Q Let's talk about this patient

8 specifically. This patient's orthodontist,
9 Dr. , had evaluated this patient
10 and came up with this treatment plan that
11 these were the teeth to be extracted in
12 order to make more space.

13 Any of these teeth that he
14 requested to be removed, are any of these
15 permanent ones that's listed in this letter?

16 A The bicuspid.

17 Q The supernumerary first
18 bicuspid on the lower?

19 A Yeah. Didn't we say that
20 bicuspid are a permanent tooth; that
21 children do not have bicuspid?

22 Q Those are not the canines that
23 you removed, correct?

24 A No.

25 Q Doctor, I'm going to show you a
0039

1 , D.D.S. 39
2 copy of a Panorex X-ray taken on
3 which has been marked
4 today as Plaintiff's Exhibit 1 for
5 identification and I'll ask you to take a
6 look at that. Do you see that, Doctor?

7 A Yes.

8 Q At the time that you saw
9 on , did you have a
10 copy of the Panorex X-ray, of this
11 particular Panorex X-ray?

12 A According to the chart records,
13 yes.

14 Q And you would agree it's good
15 practice to refer to X-rays prior to
16 performing an extraction, correct?

17 A Yes.

18 Q And you want to identify
19 anatomically where a tooth is before
20 extracting it, correct?

21 A Yes.

22 Q You also want to identify if
23 there is any nerves close to the root of the
24 tooth, correct?

25 A Yes.

0040
1 , D.D.S. 40

2 Q And you want to see what the
3 adjacent structures are as well?

4 A Yes.

5 Q And X-ray will help you
6 identify the bone and see if there are any
7 anomalies or any problems in the area where
8 the extraction is to be performed?

9 A Yes.

10 Q In addition to that Panorex,
11 Doctor, you also took bitewing X-rays on
12 ?

13 A It's possible.

14 Q Do the notes that you have in
15 front of you, the chart, reflect that you
16 took any X-rays that day?

17 A No.

18 Q Do you have the billing
19 statement in there, Doctor?

20 A Yes.

21 Q Does the billing statement
22 reflect that the patient was billed for
23 X-rays taken that day?

24 A Yes.

25 Q And what X-rays does it

0041

1 , D.D.S. 41

2 indicate were done that day?

3 A It says, exam for bitewing and
4 two bitewing. That's not my handwriting
5 though.

6 Q I'm just asking if there's
7 something that indicates that X-rays were
8 done that day?

9 A Yes.

10 Q Now, in your handwritten note
11 for your treatment of this patient, do you
12 indicate that X-rays were taken before
13 performing extractions?

14 A No.

15 Q Do you indicate anything about
16 X-rays having been taken that day?

17 A No.

18 Q Would you agree that it's
19 better to take X-rays before doing
20 extraction rather than after?

21 A Yes.

22 Q Why?

23 A Because after it's too late.
24 What purpose would an X-ray after a surgery
25 serve you?

0042

1 , D.D.S. 42

2 Q Okay. Doctor, on the Panorex
3 film, which is Plaintiff's 1 for
4 identification, can you point to me, please,
5 where the supernumerary first bicuspid are
6 on this document?

7 A (Pointing.) Here.

8 Q Okay.

9 MR. OGINSKI: Counsel, can I
10 have him mark with an X or a line
11 just to identify? If you can just
12 draw a line straight down.

13 A (Complying.)

14 Q Which ones are the
15 supernumerary first bicuspid?

16 A (Complying.)

17 Q Okay. Doctor, I've just
18 written on the document duplicate
19 supernumerary first bicuspid where you put

20 the arrows.
21 Can you identify, please, on
22 this X-ray where are the permanent canines
23 on the lower jaw that you actually removed?
24 A (Complying.)
25 Q Okay. You marked that with an

0043

1 , D.D.S. 43
2 X on both left and right, correct, on the
3 lower jaw?
4 A Yes.
5 Q Can you show me, Doctor, where
6 is the deciduous maxillary right first
7 molar?
8 A Maxillary?
9 Q Yes.
10 A Here (indicating).
11 Q Make a little circle to
12 differentiate it.
13 A (Complying.)
14 Q Let me identify that. Can you
15 tell me, please, where the deciduous
16 maxillary right cuspid is?
17 A Here (indicating).
18 Q Doctor, where is the deciduous
19 maxillary left cuspid?
20 A (Complying.)
21 Q Can you please show me where
22 the deciduous mandibular left first molar
23 is?
24 A (Complying.)
25 Q Can you please point out,

0044

1 , D.D.S. 44
2 Doctor, the deciduous mandibular right first
3 molar?
4 A (Complying.)
5 Q I'd like to show you, Doctor,
6 Plaintiff's Exhibit 2, which is another
7 Panorex taken of . This
8 one is taken on .
9 MR. : This is after
10 the treatment.
11 MR. OGINSKI: Correct.
12 MR. : So because it's
13 after the treatment and it would not
14 be something that he would have
15 reviewed for today, I'm going to
16 object to it. Subsequent treatment
17 records, he is not really here to
18 testify to that.
19 Q Is it true, Doctor, that you
20 did not see after ?
21 A Yes.
22 Q As you mentioned, you did not
23 take any X-rays after the extractions,
24 correct?
25 A No.

6 I've provided to you, the one taken on
7 , in the Panorex film is there
8 evidence of any permanent canine teeth on
9 this film?

10 MR. : Okay. Again, I
11 have to object because I don't think
12 it's appropriate for him to have to
13 comment on subsequent care, and I'm
14 not sure where you're leading.

15 If this is the only question
16 you're going to ask about this
17 document, I'll permit it over my
18 objection but if you're trying to
19 use it to open the door to ask him
20 what should be done for this
21 patient --

22 MR. OGINSKI: No, no, I only
23 want to make an observation about --

24 MR. : You understand
25 why I'm objecting?

0048

1 , D.D.S. 48

2 MR. OGINSKI: I got it.

3 MR. : So this is the
4 one and only question you're asking
5 on this. Over my objection, you can
6 answer.

7 A You want to know if there are
8 canines on the bottom here?

9 Q Correct.

10 A No.

11 Q Thank you. Doctor, I want to
12 show you X-rays that were provided to me by
13 in this pack and
14 there are four of them here dated
15 . And also, in a separate
16 one, which is a PA film also, if we can just
17 keep them separate.

18 A (Complying.) They are already
19 mixed.

20 Q Okay.

21 A These are four bitewings.
22 These are all deciduous teeth. I mean this
23 X-ray -- Where did you get this X-ray from?

24 Q It came within the material
25 provided to me by ,

0049

1 , D.D.S. 49

2 when we asked them, in a packet with an
3 envelope.

4 A According to this X-ray it
5 looks like the permanent canines are still
6 in the bone and those are deciduous canines.
7 If you want to take a look at that.

8 MR. : So you're saying
9 that this supports --

10 A The extractions. Believe it or
11 not, yeah.

12 MR. : That was taken
13 before the extractions.
14 A If this is her mouth, even now
15 looking at this, I would say that the
16 deciduous canines are present and that these
17 are -- the permanent canines are directly
18 below.

19 MR. : This would have
20 to be preoperative.

21 A Yeah.

22 MR. : This is coming
23 out of an envelope that is dated 2
24 PA, four bitewings,

25 Q Without seeing the original

0050

1 , D.D.S. 50
2 records or the original films, is there any
3 way for you to identify that small little
4 film in your hands as being 's as
5 opposed to any other patient?

6 A Just by what's labeled on the
7 envelope here (indicating).

8 Q And when you take these
9 bitewing X-rays and the PA X-rays, do they
10 get put into some little page that gets
11 clipped in?

12 A They get put in these envelopes
13 and the envelopes get put in the chart.

14 Q There is no actual identifying
15 information on that small little X-ray for
16 the patient's name or other patient
17 information, correct?

18 A Not on any of the X-rays. It
19 looks that way.

20 MR. : Doctor, just to
21 be clear, your review of that
22 particular X-ray, what type of film
23 is that?

24 THE WITNESS: Periapical.

25 MR. : And it includes

0051

1 , D.D.S. 51
2 which teeth?

3 THE WITNESS: It has permanent
4 twenty -- It looks like it has
5 permanent 22 through 27.

6 MR. : In your opinion,
7 that supported the type of
8 extraction that you performed that
9 day?

10 THE WITNESS: Yes.

11 MR. : Do you know
12 whether you saw that particular film
13 before you did the extraction?

14 THE WITNESS: It would make
15 sense that this film would, you
16 know, cause me to do those
17 extractions.

18 Q Which extractions are you
19 referring to?

20 A The extractions that were done
21 the day of treatment.

22 MR. : Do you know who
23 took that film?

24 THE WITNESS: I don't.

25 Q Doctor, let's be specific. The
0052

1 , D.D.S. 52

2 canine, the adult canines that you removed,
3 are they visible in that PA that you're
4 holding?

5 A Yes, but they are under the
6 gum. So they could not have been removed
7 according to this X-ray.

8 Q Wait a minute. I want to
9 understand.

10 A The permanent canines are still
11 in the bone in this X-ray is my point.

12 Q That would be a preextraction
13 X-ray?

14 A Preextraction X-ray which means
15 for me to get to those teeth there is no way
16 that I could have taken these teeth out that
17 day.

18 MR. : Can you look at
19 the Panorex and that film and say
20 whether or not --

21 A It doesn't make sense to be
22 honest with you.

23 Q Just based upon what you've
24 told us, is it possible that that film that
25 you're holding in your hand is not this

0053
1 , D.D.S. 53

2 patient's X-ray?

3 A I mean it's possible that any
4 of these films are not the patient's X-ray.
5 I don't have the patient in front of me to
6 verify.

7 Q Based upon the Panorex film,
8 based upon the two Panorex films that I have
9 in front of you.

10 A I'm saying according to this
11 film the deciduous canines are still
12 present.

13 MR. : Because they are
14 under the bone.

15 THE WITNESS: No, the baby
16 canines are still present according
17 to this film.

18 MR. : Okay.

19 THE WITNESS: There is two sets
20 of canines here in this film.

21 MR. : Can you compare
22 it to the Panorex and say whether
23 it's different?

24 THE WITNESS: I mean incisors
25 look the same. It's amazing. I'm

0054

1 , D.D.S. 54

2 amazed by the discrepancy here. I
3 don't understand.

4 Q Now, if you were presented with
5 this discrepancy, as you've just described
6 that, would that periapical X-ray, the
7 Panorex and the patient sitting in front
8 you, what options did you have at that point
9 in order to determine for sure which teeth
10 would be extracted?

11 MR. : This is
12 hypothetical because we don't know
13 which film he had or looking at at
14 the time. You have not laid a
15 foundation on which one he would
16 rely on or whether it was both of
17 them.

18 A I'm sorry.

19 Q I want you to assume that Mrs.
20 , the patient's mother, was in the
21 room with you at the time that these
22 extractions were being done and that she has
23 testified that you continued throughout the
24 course of the extractions to refer to the
25 X-ray, the small X-rays that you have in

0055

1 , D.D.S. 55

2 front of you together with the Panorex and
3 Dr. 's letter, was that consistent
4 with what you would expect to do in this
5 situation?

6 A Yes.

7 Q And that if you were unsure
8 about which tooth or teeth to remove that
9 you would have stopped and done something
10 else in order to verify a particular tooth
11 and the anatomical structure where it was
12 located?

13 A As I said before, if I pulled
14 teeth, I was certain of which teeth they
15 were at the time. You know, I don't
16 remember ever being uncertain about teeth.

17 Q Then explain to me how you
18 pulled the permanent canine teeth as opposed
19 to removing the deciduous canine teeth?

20 MR. : His medical
21 basis at that time. What was your
22 understanding at that time looking
23 at the films?

24 A That was my understanding at
25 that time.

0056

1 , D.D.S. 56

2 Q What was?

3 A That I was pulling the correct

4 teeth.

5 Q Did you learn before this
6 lawsuit was started -- did you learn you had
7 removed incorrect teeth or teeth that were
8 not intended to be removed?

9 A No.

10 Q Did you ever have a
11 conversation with Dr. after
12 ?

13 A No.

14 Q Did you ever have a
15 conversation with Dr. about the
16 teeth that you did remove?

17 A No.

18 Q Did you ever have a discussion
19 with any dentist at
20 about the teeth that you had removed?

21 A No.

22 Q Dr. says in his
23 evaluation, orthodontic evaluation to Dr.
24 , he says there are bilateral
25 unerupted supernumerary first bicuspid.

0057

1 , D.D.S. 57

2 What does that mean to you?

3 A It means that there are teeth
4 on either side of the lower jaw that are
5 extra and unerupted.

6 Q And unerupted means they are
7 below the skin line or gum line?

8 A Below the tissue, yes.

9 Q So you are not able to
10 visualize by looking at them?

11 A No.

12 Q You would only be able to see
13 them on X-ray?

14 A Yes.

15 Q Now, on the Panorex you pointed
16 out to me the supernumerary first bicuspid
17 on the lower jaw on both the left and right?

18 A Yes.

19 Q Okay. Do any of the X-rays
20 that you took that day or had taken that
21 day, show the area of the supernumerary
22 first bicuspid, the areas you've identified
23 here on the Panorex?

24 A No.

25 Q The canine teeth that you have

0058

1 , D.D.S. 58

2 identified in the Panorex, are they erupted?

3 A You can't see tissue on the
4 X-rays. It seems that they are but I can't
5 say looking at them now, you know, that they
6 are erupted.

7 Q Are you able to compare the
8 other four bottom teeth, the ones in the
9 center, in relation to the canines that you

10 did remove as to whether or not you would
11 expect these to be erupted based upon how
12 they appear in the Panorex?

13 A They seem as they would be but
14 there is no guarantee that they were visual
15 in the mouth at that time.

16 Q The supernumerary first
17 bicuspids on the lower left and right, those
18 clearly are unerupted on the Panorex?

19 A Yes.

20 Q And you would agree based upon
21 Dr. 's request that it was these
22 teeth that were to be extracted on
23 on the day that you were
24 performing the extractions, correct?

25 MR. : Note my

0059

1 , D.D.S. 59

2 objection. Can you at least let him
3 look at the order?

4 MR. OGINSKI: Yes.

5 MR. : Actually, the
6 other order.

7 A Yes, that's fine. I could see
8 it there on that referral. You know, these
9 teeth.

10 Q Just be specific which ones
11 you're pointing to.

12 A The supernumerary first
13 bicuspid.

14 Q Okay. So that was one of the
15 sets of teeth that Dr. asked to
16 be extracted, correct?

17 A Yeah.

18 Q And based upon the Panorex that
19 you identified, those are clearly unerupted,
20 right?

21 A Yes.

22 Q And did you extract those teeth
23 on ?

24 A No.

25 Q Why not?

0060

1 , D.D.S. 60

2 A I'm not sure. Those teeth are
3 still what appears to be under the bone.
4 That would actually make for a difficult
5 extraction. I don't know that I would do an
6 extraction.

7 Q Would you agree, Doctor, that
8 extracting, based upon the placement within
9 the bone as seen on the Panorex, that the
10 supernumerary first bicuspid on the left and
11 right would, in your words, be a difficult
12 extraction?

13 A Yes.

14 Q In that instance, it would be
15 good care to refer the patient out to

16 an oral surgeon to have those teeth
17 extracted?

18 MR. : Note my
19 objection to form.

20 A Yes.

21 Q Why?

22 A You said it was a difficult
23 extraction.

24 Q Did you refer the patient to an
25 oral surgeon to have those supernumerary

0061

1 , D.D.S. 61

2 first bicuspid extracted?

3 A No.

4 Q Is there a reason why you did
5 not?

6 A I'm not sure.

7 Q You've told me that you did not
8 extract those teeth. Would you agree it
9 would be good practice to refer the
10 patient to an oral surgeon to have those
11 supernumerary first bicuspid extracted?

12 MR. : Objection. He
13 just answered that question.

14 A Yes.

15 Q Did you have a conversation
16 with Mrs. towards the end of the
17 treatment visit that you told her that you
18 extracted two additional teeth that was not
19 requested to be removed?

20 A I don't recall.

21 Q The assistant who was with you
22 in the room at the time of these
23 extractions, do you recall who that was?

24 A No.

25 Q Do you recall if it was a man

0062

1 , D.D.S. 62

2 or a woman?

3 A No.

4 Q I want you to assume that Mrs.
5 has testified that she was
6 present in the room during the entire
7 duration that you were extracting 's
8 teeth and that there was a female assistant
9 in the room, and that she had a young baby
10 or child in the room at that time. Does
11 that refresh your memory as to who that
12 might have been?

13 A No.

14 Q Mrs. has testified
15 that this was a young child running in and
16 out of the treatment room during the course
17 of your extractions. Do you have any memory
18 of that fact?

19 A No.

20 Q Are you still employed at

21 ?

22 A No.
23 Q How long have you continued to
24 work there?
25 A How long did I continue to work

0063
1 , D.D.S. 63
2 there from this day?

3 Q From the time you started until
4 the time you left.

5 A I'm not exactly sure. It was
6 not very long.

7 Q Approximately?

8 A A year, maybe, if that. Under
9 a year.

10 Q After working there, where did
11 you go?

12 A I went to an office in

13 .
14 Q What was that name?

15 A It was doctors,

16 and .

17 Q How long did you work there?

18 A Approximately two-and-a-half,
19 three years.

20 Q After that, where did you work?

21 A I worked where I work

22 currently.

23 Q Which is where?

24 A My practice in

25 Q What's the name of that?

0064
1 , D.D.S. 64

2 A

3
4 Q Is that a professional
5 corporation or something else?

6 A It's a corporation.

7 Q What is your title there? Are
8 you an owner, president, shareholder or
9 something else?

10 A Owner, I guess. Owner and
11 president.

12 Q Now, you mentioned in
13 of you were working at a few other
14 offices?

15 A One of these was in here,
16 sorry.

17 Q That's okay. You mentioned you
18 were working also in two other offices in
19 , what were the other two

20 offices?

21 A I don't remember.

22 Q Where were they?

23 A I don't know to be honest with
24 you. Maybe

25 Q How long did you work in those

0065
1 , D.D.S. 65

2 other two offices?
3 A Around the same time.
4 Q And what was your general
5 responsibility for treating patients there?
6 A Same.
7 Q General dentist?
8 A Yeah.
9 Q By the way, when you treated
10 at , as a
11 dentist who came in one or two days a week,
12 were you required to bring in your own
13 instruments?
14 A No.
15 Q So you used the office's
16 instruments?
17 A Yes.
18 Q Did you consult with any doctor
19 while caring for on
20 ?
21 A I believe I spoke with Dr.
22 that day but I'm not sure. I'm
23 being honest with you. I really don't
24 remember.
25 Q Why would you have spoken to

0066

1 , D.D.S. 66
2 him that day?
3 A I don't know if I spoke to him
4 or someone in his office. I'm not sure. I
5 vaguely remember calling his office. I
6 don't know why and I don't know if I spoke
7 to him.
8 Q Did you make a note of any
9 conversation you had with whoever was there?
10 A No.
11 Q Can you turn, please, to the
12 office notes and I'd like you to read,
13 please, your entire note into the record.
14 And if there's an abbreviation, just tell me
15 what it represents.
16 A Patient presents with
17 orthodontic extraction requests. Reviewed
18 medical history, no significant findings.
19 Three carpules of two percent Lidocaine.
20 One to 100,000 Epinephrine given. Consent
21 signed by mother. Numbers B,C,G,H,L,S and
22 22, 27 supernumeraries, as per orthodontic
23 request. No sutures. Post-op instructions
24 given. Next visit, recall.
25 Q Now, numbers 22 and 27, that

0067

1 , D.D.S. 67
2 was your understanding of where the
3 supernumerary first bicuspid was or is
4 that -- Tell me what the 22 and 27 refer to.
5 A That refers to me thinking that
6 there were supernumerary cuspid teeth
7 present.

8 Q Is it your understanding that
9 that, in fact, was not the case?
10 MR. : You mean as he
11 sits here today?
12 Q As you sit here now.
13 A Today, yes.
14 Q Have you spoken with any of
15 's treating doctors that she has seen
16 after this treatment in ?
17 A No.
18 Q Have you reviewed any records
19 relating to 's ongoing care
20 and treatment?
21 A No.
22 Q Have you reviewed any of her
23 orthodontic records?
24 A No.
25 Q If you were to have referred a

0068

1 , D.D.S. 68
2 patient to an oral surgeon, who would you
3 have referred them to? Again, this is back
4 in .
5 A I'm not sure.
6 Q Would you have asked somebody
7 in the office as to who the doctors
8 typically refer out to or did you have
9 somebody that you would personally refer to?
10 A I don't recall. But,
11 typically, when you work in an office, you,
12 I guess, refer to specials that that office
13 normally refers to.
14 Q Other than the note that you
15 just read to me, did you do any charting on
16 any chart that you see here on the
17 first page of her notes?
18 A I don't see any additional
19 charting, no.
20 Q The first page that we're
21 looking at here, what is this page? Is this
22 a billing page, a treatment record? What is
23 that?
24 A I guess it could be both.
25 Q And is there anything contained

0069

1 , D.D.S. 69
2 on this page in your handwriting?
3 A Yeah, right here (indicating).
4 Q Can you tell me what you're
5 referring to?
6 A It says "XOB."
7 Q What is that?
8 A What?
9 Q "XOB"?
10 A That means extractions of tooth
11 B.
12 Q The column underneath lists?
13 A Other extractions that were

14 done.

15 Q And the letters refer to baby
16 teeth, correct?

17 A \$40.

18 Q That refers to baby teeth,
19 correct?

20 A Yes.

21 Q You treated this patient
22 without regard to whether or not the patient
23 had insurance or was paying out-of-pocket,
24 correct?

25 A I don't really deal with

0070

1 , D.D.S. 70

2 insurance to verify that at all.

3 Q In other words, patients before
4 you, you're treating them, you're doing
5 whatever has to be done at that time,
6 correct?

7 A Yes.

8 Q And they deal with the payment
9 issues after they leave you?

10 A Before or after. I don't know
11 how that office operated.

12 Q The informed consent that is
13 typically given to the patient before
14 extractions are done, who gives them that
15 consent; is it a nurse, an assistant or
16 something else?

17 A Usually an assistant but, you
18 know, I usually review it at some point
19 before to make sure it's signed.

20 Q Okay. And do you do that in
21 consultation?

22 A Any surgical procedure.

23 Q In this particular instance,
24 did you have the patient's mother sign the
25 consent form?

0071

1 , D.D.S. 71

2 A Yes.

3 Q And how long was your
4 discussion with her about consent?

5 A I don't recall.

6 Q Did you discuss with her the
7 risks of extractions?

8 A Typically I do.

9 Q Do you have a specific memory
10 of having a conversation with Ms.
11 about 's proposed extractions?

12 A I don't recall having a
13 conversation but typically I discuss the
14 consent form with the person before they
15 sign it; be it the patient or the mother. I
16 ask them if they have any questions and go
17 over anything that may be pertinent to the
18 type of surgery we're doing that day.

19 Q Focusing specifically on this

20 patient on , when you spoke
21 to the patient's mom, was in the
22 room at the same time?

23 A I don't recall.

24 Q Did you specifically tell mom
25 what teeth were going to be extracted?

0072

1 , D.D.S. 72

2 MR. : Objection. He
3 just said he does not have a
4 specific recollection. He testified
5 to his practice, now you're
6 following up.

7 MR. OGINSKI: I'm just probing
8 a little bit.

9 MR. : You're trying to
10 refresh his recollection.

11 MR. OGINSKI: Fair enough.

12 Q Doctor, as you sit here now, do
13 you have a memory of talking to Mrs.
14 about the specific teeth you were
15 going to be removing?

16 A No.

17 Q Let's go back, please, to Dr.
18 's request to extract teeth. Is
19 there anything in his letter that is
20 ambiguous about which teeth he wanted
21 removed?

22 A No.

23 Q Was it your understanding that
24 the reason to extract these particular teeth
25 was because of overcrowding?

0073

1 , D.D.S. 73

2 A Yes.

3 Q You went to ?

4 A Yes.

5 Q When did you graduate?

6 A ' .

7 Q Started in ?

8 A Yes.

9 Q And went to
10 undergrad?

11 A Yes.

12 Q And after school,
13 you told me you did a little bit more than a
14 year in residency?

15 A Hospital.

16 Q After that, did you do any
17 additional training?

18 A Training in?

19 Q In anything.

20 A Yeah, we're required to take a
21 certain number of credits per year of
22 continuing education which I keep up with.

23 Q And you're a member of certain
24 societies?

25 A Yes, the ,

0074

1 , D.D.S. 74

2

3 Q Are you an officer of any of
4 those organizations?

5 A No. I'm also a member of the

6

7 Q Have you written in the field
8 of dentistry for any publications?

9 A No.

10 Q Have you published any peer
11 review in the field of dentistry?

12 A No.

13 Q Have you lectured to any body
14 of dentists?

15 A No.

16 Q Have you ever testified before?

17 A No.

18 Q Do you know Dr. ?

19 A I don't know.

20 Q How many dentists worked at
21 during the time that

22 you worked there?

23 A I have no idea.

24 Q Can you approximate, please.

25 A No.

0075

1 , D.D.S. 75

2 Q Now, did you ask the patient to
3 return for follow-up after ?

4 A It says, next visit, recall.

5 Q What does that mean?

6 A Recall appointment, follow-up.

7 Q As far as you know, did the
8 patient ever return to

9 ?

10 A According to the chart records,
11 they returned in of that year.

12 Q Are you able to tell who saw
13 the patient that time?

14 A No.

15 Q Was the patient examined at
16 that time?

17 A I don't know. I wasn't there.

18 Q Based upon the record you have
19 in front of you.

20 A It's illegible to me. I don't
21 know exactly what that is.

22 MR. : Off the record.

23 (At this time, a brief

24 discussion was held off the record.)

25 Q Doctor, the treatment above

0076

1 , D.D.S. 76

2 yours in the chart, when is the last date
3 that's reported there that the patient was
4 in that office?

5 A '06.

6 Q What was the exact date,
7 please?
8 A
9 Q What was done on that date?
10 A I believe sealants were done.
11 Q Did you ever learn from anyone
12 except your attorney about the specific
13 reason why did not return to the
14 office after
15 ?
16 A No.
17 Q Did you ever have a phone
18 conversation with either or her
19 mother shortly after your treatment of
20 on ?
21 A Not that I know of.
22 MR. OGINSKI: Off the record.
23 (At this time, a brief
24 discussion was held off the record.)
25 Q How long did it take you to

0077

1 , D.D.S. 77
2 perform all these extractions on
3 ?
4 A I don't recall.
5 Q What did you do with the teeth
6 that you extracted? Did you send them to
7 pathology? Did you throw them out? What
8 did you do with them?
9 A I don't remember.
10 Q Did you give the teeth to the
11 patient or to her mother?
12 A Typically, I don't do that
13 because, you know, they're sources of
14 infection normally.
15 Q I want you to assume that Mrs.
16 has testified that after these
17 extractions were done you gave her or her
18 daughter all the teeth that you had
19 extracted. Does that refresh your memory?
20 A No.
21 MR. OGINSKI: Thank you.
22 MR. : I guess we'll be
23 doing a D&I for those.
24 MR. OGINSKI: You guys saw
25 them. The patient produced them.

0078

1 , D.D.S. 78
2 Thank you.
3 MR. : No questions.
4 Thank you.
5 (Time noted: 11:57 a.m.)
6
7
8

9 _____
10 , DDS

11 Subscribed and sworn to before me
12 this ___ day of _____, .
13
14
15

16 _____
NOTARY PUBLIC

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0079

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0080

1
2 ERRATA SHEET FOR THE TRANSCRIPT OF: 80
Case Name: vs
3
Date:
4 Witness: , DDS
5

6	PG	LN	NOW READS	SHOULD READ	REASON FOR
7	—	—	_____	_____	_____
8	—	—	_____	_____	_____
9	—	—	_____	_____	_____
10	—	—	_____	_____	_____
11	—	—	_____	_____	_____

12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____

21 _____

22
23

24 Subscribed and sworn to before me
this _____ day of _____, .

25 _____
(NOTARY PUBLIC)

0081

1 81

2 CERTIFICATION
3 I, _____, a Notary Public in
4 and for the State of New York, do hereby certify:
5 THAT the witness whose testimony is herein
6 before set forth, was duly sworn by me; and
7 THAT the within transcript is a true record
8 of the testimony given by said witness.
9 I further certify that I am not related,
10 either by blood or marriage, to any of the parties
11 to this action; and
12 THAT I am in no way interested in
13 the outcome of this matter.
14 IN WITNESS WHEREOF, I have hereunto
15 set my hand this

16
17
18 _____
19

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