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defendant herein, called by plaintiff as upon  
cross-examination pursuant to notice and subsequent  
agreement between the parties, pursuant to the Ohio  
Rules of Civil Procedure, before Susan W. Talton, a  
Registered Professional Reporter and Notary Public  
within and for the State of Ohio on  
Thursday, January 12, 1984 at the offices of  
Ticktin, Baron & Kabb, 903 Keith Building,  
Cleveland, Ohio.

— — —

7 81-7120

Engeline Koepper

Ticktin, Baron & Kabb

930 Keith Building

Cleveland, Ohio

on behalf of the Plaintiff

James Malone

Reminger & Reminger

Leader Building

Cleveland, Ohio

on behalf of the defendant.

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1 take down everything you say. If you do not  
2 understand a question that I ask you, please  
3 stop me and ask me to rephrase it so that can  
4 I can be sure if you answer a question you  
5 have answered the question you've understood;  
6 is that fair?

7 THE WITNESS: Fine.

8 ~~PETER E.~~ CARFAGNA, D.D.S.

9 Defendant herein, called by Plaintiff as upon  
10 cross-examination, having been first duly  
11 sworn, as hereinafter certified, was examined and  
12 testified as follows:

13 CROSS-EXAMINATION OF PETER E. CARFAGNA, D.D.S.

14 by Ms. Koepper:

15 Q. What is your full name?

16 A. Peter Ernest Carfagna. C-a-r-f-a-g-n-a.

17 Q. Carfagna?

18 A. Uh-huh.

19 Q. What is your date of birth?

20 A. Second November 1919.

21 Q. Do you practice under the name of a corporation  
22 or --

23 A. Oh, no.

24 Q. --just by yourself.

25 Q. What is your social security number?

1 A. I think it's 276-07-8132.

2 Q. Are you married, sir?

3 A. Yes.

4 Q. What is your wife's name?

5 A. Jeanne. J-e-a-n-n-e.

6 Q. Do you have children?

7 A. Four; three girls and a boy.

8 Q. Are they **all** grown and on their own?

9 A. Petty much, pretty much, Two yet in college.

10 Q. What is your business address, sir?

11 A. 305 Osborn Medical Building.

12 Q. And your residence address?

13 A. Is 18932 Winslow.

14 Q. That sounds like we are neighbors; that is Shaker  
15 Heights, isn't it?

16 A. Right.

17 Q. How long have you been a dentist?

18 A. I opened it up in, my degree says '44. 1944.

19 Q. We are talking about 40 years here that you have  
20 been practicing denistry?

21 A. Yes.

22 Q. Were you licensed in Ohio in 1944?

23 A. Yes, yes.

24 Q. Are you licensed in any other state?

25 A. No ,

1 Q. Do you have a specialty in denistry?

2 A. No, general.

3 Q. Where did you get your undergraduate degree?

4 A. Western Reserve.

5 Q. What was that degree?

6 A. D.D.S.

7 MR. MALONE: She asked for your  
8 undergraduate degree, doctor; before you went  
9 to dental school.

10 A. I had a B.A.-B.S. and two, other degrees.

11 Q. What school was that?

12 A. Western Reserve.

13 Q. You have all your degrees from Western Reserve?

14 A. Yes, they are all there.

15 Q. And you had a B.S. and B.A.?

16 A. Yes.

17 Q. And your D. D. S. ?

18 A. Yes.

19 Q. And when did you graduate from the dental school?

20 A. Forty-four.

21 Q. Then you became licensed the same year--

22 A. I think so.

23 Q. --you graduated?

24 A. Yes.

25 Q. Did you have to attend any residency as part of

1 your dental program?

2 A. No, I was inducted in the Service; that was my  
3 residency.

4 Q. When was that?

5 A. In 1944.

6 Q. What branch of the Service?

7 A. Dental Corps.

8 Q. Was it of the Army, Navy?

9 A. Army, Army.

10 MR. MALONE: I don't think  
11 anybody else was drafting; could you get  
12 drafted in the other Services?

13 THE WITNESS: No question; it  
14 was mandatory.

15 MR. MALONE: To the Army?

16 THE WITNESS: No, you could have  
17 selected Army or Navy, yes.

18 Q. How long did you serve in the Army?

19 A. Till '47.

20 Q. Where did you serve?

21 A. In the States, United States.

22 Q. In the Cleveland area or where?

23 A. Oh, no. Camp Blanding. Fort Bragg.

24 Q. I take it then you received an honorable discharge?

25 A. Please, yes.

1 Q. Did you do an internship of any kind or was this  
2 all part of --

3 A. Walter Reed.

4 Q. Walter Reed. When was that?

5 A. I can't think of the year but definitely, that was  
6 one of the courses. At Walter Reed, I would say,  
7 what was it? I can't think of the year, but I was  
8 there.

9 Q. Would it have been prior to '44 or after?

10 A. After.

11 Q. After you got out of the Service?

12 A. Yes.

13 Q. Then--

14 A. Yes.

15 Q. --when did you set up practice here?

16 A. Forty-seven.

17 Q. In Cleveland?

18 A. 1947.

19 Q. And have you always been in the Osborn Building?

20 A. Same place.

21 Q. Have you published any articles in any journal of  
22 dentistry?

23 A. No.

24 Q. Any textbooks publications?

25 A. No.



1 Q. Have you received any academic <sup>points</sup> teaching in  
2 the area of denistry?

3 A. No.

4 Q. Can you tell me what the internship that you did at  
5 Walter Reed consisted of?

6 A. I belonged to the Reserves. And I would go all  
7 over the country, even San Francisco and Walter  
8 Reed and take different courses like that.

9 Q. So **it was** a training?

10 A. Yes.

11 Q. Any additional training?

12 A. Definitely.

13 Q. Did you concentrate in any particular area of  
14 Denistry?

15 A. Whatever the course project, you know.

16 Q. Other than the internship that you did, sometime  
17 prior to 1947--is that a correct statement--

18 A. *Yes.*

19 Q. --did you have any further training in denistry?

20 A. Oh, yes.

21 Q. What kind of training?

22 A. Well, I was in Chicago. I had a course in  
23 endodontics. And again in San Francisco, I was at  
24 Hanaman General. It's a general hospital in Frisco  
25 and that course was Prosthetics.

1 Q. And what was the date or the approximate date that  
2 you had the endodontics course in Chicago?

3 A. It was in the 50s. I'm not sure.

4 Q. What hospital or what facility?

5 A. That was north Chicago. I can look it up.

6 Q. Was it Northwestern University?

7 A. No, it was a hospital.

8 Q. But you don't recall?

9 A. Not offhand, no.

10 Q. And in San Francisco, what was the date of your  
11 course there in Prosthetics?

12 A. That, I can't recall.

13 Q. Was it before or after the Chicago?

14 A. After the Chicago.

15 Q. Well, was it, can you give an approximate time?

16 A. 1960.

17 Q. Can you describe the extent of those, specifically  
18 of the endodontics course; how long was it, what  
19 periods?

20 Approximately a week.

21 Q. And the Prosthetics course?

22 A. I think that was two weeks.

23 Q. And other than these courses that you had after  
24 your internship, have you had any other training in  
25 dentistry?

1 A. That surgery in Walter Reed.

2 Q. Surgery at' Walter Reed?

3 A. Yes, uh-huh.

4 Q. When was that?

5 A. That, I don't recall. I think that was in the 50s.

6 Q. Have I missed anything? Have you had other dental  
7 training that you can you recall?

8 A. Not that I can at the moment, no.

9 Q. Are you currently a member of any dental societies?

10 A. All of them; ADA, local, state, Cleveland,  
11 national.

12 Q. Have you always been a member of these societies?

13 A. Always.

14 Q. Keep your membership current?

15 A. Yes.

16 Q. What is the local dental society here in Cleveland?

17 A. Cleveland Dental.

18 Q.

19 MR. MALONE: Cleveland Dental  
20 Society?

21 THE WITNESS: Society, yes.

22 Q. Do you attend meetings regularly or what is your  
23 participation?

24 A. When I can: when I could, rather.

25 Q. Are there continuing dental education courses

1           offered or anything like that?

2       A.     Oh, yes.

3       Q.     What kinds of programs are offered that you've  
4           participated in?

5       A.     Oh, yes. Now, I can't think offhand but I have  
6           from time to time. I can't tell you when but I  
7           participated.

8       Q.     When is the last such event that you attended or  
9           participated in?

10      A.     Offhand -- I'd say about seven or eight years ago,  
11           something like that.

12      Q.     Do you recall the topic that was covered?

13      A.     What do you call. Operative, filling materials,  
14           things like that.

15      Q.     Do you subscribe to any journals?

16      A.     Oh, yes.

17      Q.     Which ones?

18      A.     There's our national journals, you know, ADA,  
19           that's all combined and Ohio state, I get that,  
20           too.

21      Q.     You read them regularly?

22      A.     Try to, yes.

23      Q.     Try to. Is it difficult to keep up with all the  
24           material?

25      A.     Got them all stacked away.

1 Q. Have you attended national conventions in denistry?

2 A. I used to go to Chicago but I found out,. yeah, I  
3 used to, but I haven't recently.

4 Q. When was the last time you attended a convention?

5 A. I'd say about seven or eight years ago.

6 Q. And that was in Chicago?

7 A. Yes, mid-winter meeting they call it.

8 Q. Did they offer any --

9 A. Yes a whole pot pourri, everything, yes; all this  
10 is little extras, yes.

11 Q. Do you recall specifically the the topic of dental  
12 care that was covered in this convention that you  
13 attended?

14 A. Oh, yes it was a periodontia, there was a  
15 operative, periodontia and prothetics also; they  
16 would have, quite a variety.

17 Q. Have you ever lectured at any convention or any--

18 A. No.

19 Q. Could you please explain what the practice of  
20 denistry entails, what all, what are the kind of  
21 services that you provided to your patients?

22 A. Oh, checkups, you know, cleaning, which would be a  
23 prophylaxis, right. And restorative if necessary.

24 a. What kind of restorative procedures?

25 A. Either operative or crown and bridge.

1 A. Or prosthetics.

2 Q. And these are all services that you, yourself,  
3 provide to your patients?

4 A. Yes, I do.

5 Q. what kind of cases do you refer to specialists?

6 A. Endodontia, surgical, some, you know, and surgical,  
7 right.

8 Q. Could you name the specific?

9 A. Faulker. F-a-u-l-k-e-r, would be orthodontia and  
10 Dr. Liberatore, surgical.

11 Q. How do you spell "Liberatore"?

12 A. L-i-b-e-r-t-o-r-e,

13 MR. MALONE: I think there's an  
14 "e" in there. B-i-b-e-r.

15 THE WITNESS: Yes that's it.

16 Q. And Faulker is in the Osborne Building?

17 A. Rose building.

18 Q. Rose building, okay.

19 Q. And you mentioned before that you have taken  
20 courses or a course in endodontics but you do not,  
21 yourself, provide this treatment, yourself?

22 A. On occasions I do, yes.

23 Q. And on other occasions you refer it out?

24 A. Yes.

25 Q. Can you tell me why you chose to become a dentist?

1 A. Ran in the family.

2 Q. Do you have any personal standards as to what  
3 constitutes good dental care?

4 MR. MALONE: Objection.

5 A. I sure hope. Sorry.

6 MR. MALONE: No, you can  
7 answer. I'll tell you not to answer if I  
8 don't want you to answer a question.

9 Q. You may answer. What are you your standards of  
10 good dental care?

11 THE WITNESS: If he objects--

12 MR. MALONE: No, no; you  
13 answer.

14 MS. KOEPPER: He will tell you.

15 MR. MALONE: I'm tell you not  
16 to if I don't want you to answer. I'm just  
17 objecting because I don't think the question  
18 is proper. This is discovery.

19 Q. I asked you if you have any personal standards as  
20 to what constitutes good dental care?

21 A. Oh, yes.

22 Q. And you said you do. I would like to know what  
23 your standards are?

24 A. You just try your best and try and please the  
25 patient.

1 Q. Is that it?

2 A. That's it.

3 Q. If trying to please your patient would entail not  
4 doing work that you felt was the right work to do  
5 or the proper work to do, would you tell the  
6 patient?

7 A. Definitely should. Definitely would, yes.

8 Q. Other than that, you don't have any standards of  
9 what constitutes good dental care?

10 MR. MALONE: You asked him a  
11 minute ago about personal standards. they  
12 were obviously objective standards that  
13 are consistent with training.

14 A. Try your best. What you know and what you have  
15 been taught and you just try your best.

16 Q. Are there any objective standards, then, as your  
17 your attorney mentioned, that you follow in giving  
18 good dental care?

19 A. Now, what would that be, please?

20 Q. Such as other dentists would follow in the  
21 community or what you're taught to follow?

22 A. Uh-huh.

23 MR. MALONE: Do you do what  
24 you are taught to do or do you do what you  
25 think other dentists in the community would



1 do?

2 THE WITNESS: Yes, definitely.

3 Q. Would you say there have been a lot of changes in  
4 dental care that have occurred in the last 40 years  
5 that you have been practicing?

6 A. Oh, yes.

7 Q. What are some of the changes that have occurred in  
8 that time?

9 A. Oh, composites, one of the big ones.

10 Q. Can you explain that?

11 A. Yes. It's a new, filling materials; let's put that  
12 down. They change from time to time.

13 Q. When did that become available?

14 A. Oh, in the last ten years or so.

15 Q. What others have occurred in providing dental care?

16 A. Still if you do your best, you know, it's still the  
17 same; pretty much the same routine.

18 Q. Have there been any changes in how to provide good  
19 hygiene or--

20 f. Oh--

21 . --for the patient.

22 MR. MALONE: Let her finish the  
23 question, doctor.

24 Q. Have there been any changes in the last 40 years as  
25 to how you teach your patients to take care of

1           their teeth at home?

2   A.       Well, not so much changes as there's still a basic  
3           standard, you know.

4   Q.       And what **is** that standard?

5   A.       Good routine dental, you know, home care.

6   Q.       What constitutes a good routine of good home care?

7   A.       Oh, brushing rinsing, flossing and diet; good diet.

8   Q.       Were you taught these same things 40 years ago in  
9           dental school?

10   A.      Yes, always.

11   Q.      Were you taught flossing, then 40 years ago?

12   A.      Oh, sure.

13   Q.      How do you keep current in the changes that are  
14           taking place in the dental area?

15   A.      Read your literature and you get them quite often.

16   Q.      Have you in the 40 years that you've practiced  
17           medicine--

18                           MR. MALONE:                   The doctor has not  
19                           practiced medicine.

20           I'm sorry. That you have been a practicing  
21           dentistry ?

22           Okay.

23   Q       And you've been licensed for 40 years, but you've  
24           actually engaged in solo practice in your own  
25           office--

1 A. Right.

2 Q. --for about 37 years is that correct?

3 A. I think, yes, since '47, yes.

4 Q. That's more like 34 years that you've actually been  
5 practicing denistry in your own office?

6 A, This is going to be '84?

7 Q. Yes, In that period of time have you always been  
8 in solo practice by yourself?

9 A. Always.

10 Q. Have you ever had any association with any other  
11 dentists, at all?

12 A. No, ma'am.

13 Q. How many active patients do you treat, currently.  
14 How many patients do you have?

15 MR. MALONE: Objection. You  
16 may answer, doctor, without names. You may  
17 give the number if you can estimate such a  
18 number?

19 A. Close to a thousand.

20 Q. In 1982 did you have approximately the same number  
21 of patients?

22 A. Yes.

23 Q. Or more or less?

24 A. Yes.

25 Q. Has your practice grown in the period from 1970 to

1 approximately 1982?

2 A. I'm always pretty busy.

3 Q. How frequently do you see your patients?

4 A. Oh, that all depends what they're having done, you  
5 know.

6 Q. If a patient--

7 A. Six--

8 Q. What is your regular recall schedule?

9 A. Six months.

10 Q. And is that for prophylatics<sup>815</sup>, routine,  
11 prophylatics?

12 A. Yes.

13 Q. And if there's additional work to be done you  
14 schedule them for that purpose?

15 A. That's right.

16 Q. Do you require some patients to come more <sup>freq</sup>recently  
17 than--

18 A. Yes.

19 Q. --than six months just for prophylactics?

20 A. Yes.

21 Q. And checkups?

22 A. Yes.

23 Q. How is your rescheduling maintained?

24 A. You make an appointment when they leave or if they  
25 don't know their schedule, send them a reminder

1 card in six months and tell them that they are due.

2 Q. And their appointment is made with your secretary,  
3 right?

4 A. Yes.

5 Q. On the date they are seeing you. In other words,  
6 you are saying that they make an appointment then,  
7 if it's less than six months if they haven't come  
8 in six months they would be sent a reminder?

9 A. Fine.

10 Q. Is this done with each one of your patients?

11 A. Every one.

12 Q. What are your office hours; what is your schedule  
13 during the weeks?

14 A. At least 7:30 to 4:30.

15 Q. Is that each and every day Monday through Friday?

16 A. I try and take some time off on Wednesday.

17 Q. Do you come in on Saturdays, at all?

18 A. Yes.

19 Q. What are your hours on Saturday, then?

20 A. Approximately 1:00; 7:30 to 1:00, 1:30.

21 Q. How many patients do you see in a day in a 7:30 to  
22 4:30 day, typically?

23 A. I'd say at least, what, seven or eight, depending  
24 if you have any emergencies.

25 Q. Do you leave sometime for emergencies?

1 A. True, yes, ma'am.

2 Q. On Saturdays, how many patients do you see from  
3 7:30 to 1:30?

4 A. About six; four to six.

5 Q. In 1982 did you see the same number of patients,  
6 approximately, per day?

7 A. I think so, yes.

8 Q. And in the period of, ten-year period before that  
9 time did your number of patients per day increase  
10 or decrease?

11 A. There might have been a little increase, you know,  
12 one or two patients extra, a day. Never decrease.

13 Q. That's good to know. Did you have a secretary or  
14 receptionist?

15 A. Yes, just that.

16 Q. Does she function as both your secretary and --

17 A. Yes.

18 Q. What was the name of that person?

19 A. Well, right now it's Jeanne. J-e-a-n-n-e,

20 Q. And the last name?

21 A. Carfagna, my wife.

22 Q. That's what I was wondering. You mentioned Jeanne  
23 before.

24 Q. How long has she been yours?

25 A. For the last two or three years.

1 Q. Before that, who was your secretary-receptionist?

2 A. Phyllis Anderson.

3 Q. Do you know where she is currently residing?

4 A. In Cleveland, yes.

5 Q. Do you know her address?

6 A. No, I don't.

7 Q. Is it A-n-d-e-r-s-o-n?

8 A. Yes.

9 Q. Is she married?

10 A. Yes.

11 Q. Do you know her husband's name?

12 A. Al Anderson. Albert.

13 Q. Did you employ a dental assistant?

14 A. No, no.

15 Q. Have you ever employed a dental assistant?

16 A. No.

17 Q. Do you take your own X-rays--

18 A. Yes I do.

19 Q. --then? Do you do your own prophylactics, then?

20 A. Oh, yes.

21 Q. Take impressions yourself?

22 A. Yes.

23 Q. And you mentioned before you construct prostheses?

24 A. That goes to the laboratory, ma'am.

25 Q. What laboratory do you use for that?

1 A. Rowmiller.

2 Q. How do you spell that?

3 A. R-o-w-m-i-l-l-e-r and then Ohio dental; Ohio Dental  
4 J. and R. There's quite a few, but those are the  
5 most.

6 Q. Rowmiller, where are they located?

7 A. I'm not sure; Maple Heights I think.

8 Q. Ohio Dental?

9 A. Yes.

10 Q. What do you send to them?

11 A. Prostheses.

12 Q. So you use them interchangeably?

13 A. Yes.

14 Q. Have you used one or the other more recently or  
15 switched recently?

16 A. Whatever comes in; you can't say you do more of  
17 this or more of that, but, yes.

18 Q. What I'm trying to determine, do they each do the  
19 same kind of work or do you send one type of  
20 request to one--

21 A. Yeah. Mostly one type to Rowmiller and one type to  
22 J and R.

23 Q. That's what I'm trying to determine; what type of  
24 work do you send to Roemiller?

25 A. Crown and bridge.



1 Q. I'm sorry?

2 A. Crown work and there's another one, Ed Advic, they  
3 used to be Osborne Dental Lab. Osborne Dental Lab  
4 and then that was Ed Advic, now they were with a  
5 firm called Moskey, and Moskey went out of business  
6 but Roemiller and the Osborne Dental Lab are people  
7 who were with Moskey for years. Moskey was the  
8 foremost dental lab in Cleveland.

9 Q. So in the last ten years have you been sending your  
10 prosthetic work to Rowmiller.

11 A. And--

12 Q. And Osborne Dental?

13 A. Osborne Dental and they used to be with Moskey for  
14 40 years or more.

15 Q. And Ad-Vic, is that yet another concern?

16 A. Yes.

17 Q. Are they still in business?

18 A. Yes, and they used to be with Moskey.

19 Q. Now what is the procedure when you wish to  
20 construct a prosthesis; what different kind of  
21 prostheses are there, for instance?

22 A. Removable and nonremovable, all right?

23 Q. And you are talking about what, one tooth or a  
24 whole series?

25 A. One or whole.

1 Q. Or denture?

2 A. Now, denture is removable: I call that removable.

3 Q. But it's always called a prosthesis?

4 A. Yes.

5 Q. And bridge work; bridge, would that be also a  
6 prosthesis?

7 A. Yes: but it's fixed, usually.

8 Q. When you requisition a prosthesis to be constructed  
9 by one of these firms--

10 A. Yes.

11 Q. --do you have to fill out a laboratory--

12 A. Oh, yes.

13 Q. Do you not have to keep that copy of that request  
14 in your office?

15 A. Yes. You should, yes.

16 Q. Now I requested in the request for production--

17 A. But--

18 Q. --production of documents for you to produce any  
19 and all laboratory slips in connection with Lou  
20 Oliver that had ever been --

21 A. Like the state also used to check on you and say,  
22 but they have said lately they haven't made any  
23 indication of keeping them.

24 Q. So you have no requisition?

25 A. I don't think I could, no: because, it becomes

1 voluminous. If you kept every bit of paper you  
2 would never have enough room--

3 MR. MALONE: Doctor, just  
4 answer the question?

5 THE WITNESS: All right.

6 Q. You did not bring any such requisition--my question  
7 is, are there any such requisitions available in  
8 your office if you looked for them?

9 A. I don't think so.

10 Q. Your statement is, at one time they were required  
11 to be kept by the State of Ohio?

12 A. Not legally, but they would like you to keep them.

13 Q. What is the status of that now; are you not now  
14 required to keep those?

15 A. Nobody has confronted me in the last three years.  
16 You know, like they once said they would, but  
17 nobody has contacted me.

18 Q. When you mentioned that you send one type of a  
19 request more to Roemiller and that was for crown  
20 and bridge work you mentioned?

21 A. Crowns, usually crowns and the other one,  
22 prosthesis is J. and R. and the other one is crowns  
23 on the last one, Ad-Vic and Osborne.

24 Q. Where do you send other types of requests for  
25 prostheses?

1 A I think that's pretty good.

2 Q I guess I'm still confused because I thought you  
3 stated before that you send a request for certain  
4 type of prosthesis more to one of these concerns--

5 A Yes.

6 Q --than to the others?

7 Now, I don't send a removable prosthetic to  
8 Roemiller They do accept them but--

9 MR. MALONE: Just tell

10 Ms. Means how it is you use each of those  
11 different laboratories for different types  
12 of works?

13 A. Right. I would say Osborne, J. and R., Ohio Dental  
14 would be prosthesis. That's this kind.

15 MR. MALONE: You mean  
16 removable; they are all prostheses?

17 A. Yes, removable, and I would say Ad-Vic and Osborne  
18 would be crown and bridge.

19

20

21

22

23

24

25

1 A. Yes.

2 Q. Which?

3 A. Ad-Vic, Osborne Dental; Ad-Vic, that's it.

4 Q. Did you send any of his requests for his prosthetic  
5 devices anywhere else other than Osborne Dental and  
6 Ad-Vic?

7 A. These are J. and R.

8 Q. When you are pointing to "these" are we talkking  
9 about what has been marked Exhibit, previously been  
10 marked Exhibits 6 and 7?

11 A. Right.

12 Q. And what has previously been marked Exhibit five;  
13 where was that constructed?

14 A. At the same place these were, that's J and R.

15 Q. So number six and seven and number five were all  
16 constructed by J and R.

17 A. Well, this is my model. I did this. They just  
18 made the bridge.

19 Q. I see what you are, you constructed?

20 A. I did that. I poured that.

21 Q. Exhibit number five.

22 Q. What kind of records do you keep on a patient at  
23 your office?

24 A. Like entry when they come in. That's it.

25 Q. You are talking about a regular dental chart kept

1 on a--

2 A. That's it.

3 Q. --what looks like a five by seven recipe card?

4 A. Yes?

5 MR. MALONE: Only a woman would  
6 call them recipe cards. They are index  
7 cards.

8 Q. And I'm referring to Plaintiff's Exhibits one and  
9 One-A. and two?

10 A. Yes, that's right.

11 Q. That you filled out on a patient, You refer to  
12 this as a dental chart?

13 A. Fine, yes.

14 Q. How do you refer to it?

15 A. As a dental chart.

16 Q. And what other information do you keep on a  
17 patient?

18 A. Oh, their X-rays radiographs.

19 Q. And also any prosthetic devices or models thereof?

20 A. If need be, because some of them are destroyed when  
21 they are made, you know.

22 Q. Why are they destroyed when you make them?

23 A. You can't take them out without breaking the mold  
24 in order to get it off. You have to break them.

25 This was saved but you have to break the model

1 sometimes and what comes back is just this.

2 Q. Then you discard them?

3 A. No, no. They don't send it back; they just send  
4 you these, the finished product.

5 Q. How often do you take X-rays of your patients?

6 A. Now, six months and sometime once a year because  
7 the patient might, I mean it's feasible might say  
8 once a year. If a patient, some say I don't want  
9 them this time, see? I know I shouldn't say that  
10 he's going --

11 MR. MALONE: Just answer her  
12 questions, doctor.

13 (continuing) All right, some object to six months.

14 Q. What is your practice of obtaining--

15 I, usually at six months.

16 Q. And you said sometimes one time per year?

17 A. Yes.

18 Q. What is the purpose of obtaining the X-rays at six  
19 months or one-year intervals?

20 A. I usually save the ones from before and compare  
21 them to see if there's any progressive condition  
22 occurring. For comparison.

23 Q. What kind of things are visualized on X-rays that  
24 gives you a signal that there's a problem?

25 A. Caries.

1 Q. And another word for tooth decay?

2 A. Yes, ma'am.

3 Q. How early can you detect caries in an X-ray?

4 At what stage?

5 A. It all depends on the person. Some decays can go  
6 for year, two years and stay the same. Others you  
7 get, unbelievably how fast can occur.

8 MR. MALONE: Doctor, did you  
9 understand her question?

10 THE WITNESS: Yes, I thought.

11 Q. As you stated, caries goes through a stage of  
12 progression?

13 A. Okay, rate of decay, okay.

14 Q. What I'm asking you is how early after a cavity  
15 occurs, can you detect it on an X-ray?

16 A. Well, the minute you take an X-ray.

17 Q. And how small, for instance, how small a cavity can  
18 you detect on an X-ray?

19 A. Pretty small, pretty good.

20 Q. In other words you could visualize it on an X-ray  
21 even though you could not detect it just by a  
22 visual examination of the tooth?

23 A. Yes.

24 Q. You just mentioned dental caries as being tooth  
25 decay and we call it cavities?



1 A. Yes.

2 Q. When would he come for treatment? Can you tell me  
3 what causes dental caries or tooth decay?

4 A. Home treatment, lack of it, right. Patient makeup,  
5 stress, very big factor.

6 Q. And if left untreated, there's a normal  
7 progression?

8 A. Yes.

9 Q. And it gets worse and worse?

10 A. Could be, yes,

11 Q. Can tooth decay be prevented entirely by home care?

12 A. In my younger patients, yes. I'd say almost pretty  
13 good percentage.

14 Q. Is that more so the case now that we have flouride  
15 in the water and so forth?

16 A. Yes.

17 Q. In the case of Mr. Oliver, who was your patient--

18 A. Uh-huh.

19 Q. --who may not have had the benefit of flouride  
20 treatments--

21 A. Yes.

22 Q. --in his younger years, is it possible for someone  
23 of his age to prevent tooth decay entirely by  
24 merely resorting to good home dental care?

25 A. It's a fight but -- I guess it's possible.

1 Q. Without ever coming to a dentist?

2 A. Now I have patients--

3 MR. MALONE: Doctor, can you  
4 answer the question with a yes or no?

5 A. It's possible.

6 Q. Now, you're in the business of helping people fight  
7 tooth decay; are you not?

8 A. Right, right.

9 Q. And if people could prevent tooth decay all by  
10 themselves by brushing every day and rinsing and  
11 eating properly and all of that, they would never  
12 have to come to see you, would they?

13 A. In some cases, no.

14 Q. Now, what do you provide in the care, in the way of  
15 prevention of tooth decay when a patient comes to  
16 you?

17 A. Signalling any trouble, any probable trouble.

18 Q. What do you mean by that?

19 A. Possible decay, possible gum condition, you know.  
20 Anything that is not normal.

21 Q. When you say, signalling any possible trouble?

22 A. Yes.

23 Q. What do you mean by the word "signalling"

24 A. Tell the patient.

25 Q. You tell the patient, okay, you have a problem?

1 A. Right.

2 Q. What do you do to treat it if he has a problem with  
3 tooth decay?

4 A. To the best of my ability, you know,  
5 prophylactically or correction of caries and so  
6 forth.

7 Q. Prophylactically, you mentioned before, is  
8 cleaning?

9 A. Yes.

10 Q. And I take it you are talking about your cleaning  
11 or professionally cleaning?

12 A. Right?

13 Q. What do you do to give prophylactic care to a  
14 patient? What is involved in that?

15 A. Scaling.

16 Q. And scaling accomplishes what function?

17 A. Remove the tartar or the calculus deposits. You  
18 know, that's -- and well, you know, anything that's  
19 adherent that is going to disturb the gums.

20 Q. And if this scaling were not done on a regular  
21 basis, what would be the natural progression--

22 A. Oh--

23 Q. --in a patient?

24 A. Well you would have the tissue breakdown.

25 Q. And tissue breakdown would lead to, what?

1 A. Possible tooth involvement.

2 Q. Such as?

3 A. What, well, possibly loosening of the tooth,  
4 whatever you want to call it. Tooth involvement  
5 means it's --

6 Q. And eventual loose of the tooth?

7 A. Eventually.

8 Q. By you providing the prophylaxis on a regular  
9 basis?

10 A. Yes.

11 Q. And removing the tartar and providing the scaling,  
12 on a regular basis, can you thereby prevent tooth  
13 decay in a patient if a patient comes to you every  
14 six months or more often?

15 A. No guarantees. You just try your best.

16 Q. What is the next stage of treatment if you cannot  
17 prevent tooth decay by home care or by your regular  
18 prophylaxis?

19 A. I don't understand that. What do you mean?

20 Q. Well, I'm referring to the case where a patient  
21 comes to you?

22 A. Yes.

23 He has done home care to whatever extent he's able  
24 to; you have provided your care and regular  
25 prophylaxis on a semi-yearly basis?

1 Le Uh-huh.

2 !- Every six months this person comes to you and this  
3 person still has tooth decay, What do you do then?

4 Le Just, keep fighting it.

5 !. How do you fight it? That's my question?

6 .. Correction.

7 !. How?

8 .. Get rid of the decay.

9 !. And how do you get rid of the decay? That is my  
10 question.

11 .. Well, remove anything that is causing it. You  
12 know, try to remove the decay.

13 !. How do you remove the decay? Would you explain?

14 .. With your treatments and so forth. You know,  
15 your--

16 MR. MALONE: How do you do a  
17 filling, doctor?

18 THE WITNESS: That's, can teach  
19 that?

20 MR. MALONE: Just explain it to  
21 her. You take the drill; you scrape out the  
22 decay?

23 THE WITNESS: Right.

24 MR. MALONE: The questions are  
25 very fundamental. She is not trying to trick

1                   you, She is just not a dentist and she is  
2                   asking you to tell how you do those things.

3     Q.       I have had fillings. Is that-- I don't want to give  
4              you the answer--you then do restorative work--

5     A.       Yes.

6     Q.       --by removing the area of decay and by treating the  
7              tooth and by putting a filling in it, as we say in  
8              laymen's terms?

9     A.       Fine.

10    Q.       You, therefore have stopped the decay--

11    A.       To the best--

12    Q.       --in that particular tooth or that particular  
13              location?

14    A.       To the best your ability.

15    Q.       That doesn't prevent further decay from happening  
16              elsewhere?

17    A.       You can have a recurrence, you sure can.

18    Q.       If a patient comes to you on a twice yearly basis  
19              or more often and you watch the teeth, you exam  
20              them, you X-ray them, you do whatever filling is  
21              necessary. In this way can you then control tooth  
22              decay in that patient?

23    A.       To your best of your ability.

24    Q.       And if the best of your ability isn't good enough,  
25              what happens?

1 A. Well, the tooth has to be removed.

2 Q. And then you have to resort to prostheses?

3 A. Right.

4 Q. Prosthetics; either replace the tooth with a false  
5 tooth and construct bridge work and so forth?

6 A. Yes.

7 Q. Now, you mentioned some problems that can occur if  
8 a patient's teeth aren't cleaned properly or the  
9 tartar isn't removed it can cause gum irritation.

10 Is that also known as gingivitis?

11 A. Oh, yes.

12 Q. And if there's sufficient irritation from this  
13 tartar buildup can this cause pockets in the area  
14 surrounding the tooth?

15 A. Yes.

16 Q. Can infection set in?

17 A. Possible, yes.

18 Q. Is periodontitis something that can happen  
19 eventually?

20 A. Yes.

21 Q. What is that, can you explain that?

22 A. It's the membrane around the tooth that becomes,  
23 say, inflamed or irritated.

24 Q. What are some of the causes that you know of that  
25 cause periodontitis?

1 A. Oh, possible bad cleaning habits, you know,  
2 maintenance, possible traumatism, which is  
3 traumatic, loose, something like that could hurt a  
4 tooth and cause periodontitis.

5 Q. What is the, how is it diagnosed, how do you  
6 diagnosis periodontitis?

7 A. Sensitive tooth. Possible motion.

8 Q. Do you do any other testing to determine what the  
9 extent--

10 A. Yeah, radiographs.

11 Q. --of the -- do you at times refer a person that has  
12 this problem to specialists?

13 A. Oh, yes,

14 Q. What specialists could you, would you refer it to?

15 A. (No response)

16 Q. Periodontist?

17 A. Yes, periodontist.

18 MR. MALONE: He was trying to  
19 think of the name. He knows it's  
20 periodontist.

21 Q. Who do you refer a periodontal to?

22 A. Frumker, Dr. Frumker.

23 Q. F-r-u-m-k-e-r.

24 MR. MALONE: U-m.

25 Q. Frumker?



1 A. U-e-r.

2 A. Sandy.

3 MR. MALONE: Sandford Frumker .

4 Q What building is he in?

5 A. I think it's Clark Building.

6 MR. MALONE: He was in the  
7 Wilson Building for years.

8 MS. KOEPPER I believe I was  
9 with him.

10 MR. MALONE: Were you a patient  
11 of Sandy?

12 MS. KOEPPER: No.

13 Q To what extent do you use anesthesia or anesthetic  
14 injections?

15 A Local.

16 Q To what extent; do you use it frequently with  
17 patients?

18 A. Oh, inevitably I would like to.

19 Q Now in the case of Lou Oliver, at some point he  
20 came into your professional care?

21 A Yes.

22 Q Do you recall the approximate time or can you say  
23 in a year or the month and year, whatever you  
24 recall, when he first came in your professional  
25 care?

1 A. At least 20 years.

2 Q. Could it have been as much as 30 years?

3 A. Possible.

4 Q. And the reason you don't know is because you don't  
5 have the records--

6 A. Right.

7 Q. --to recall the approximate age he was when you  
8 first treated him?

9 A. No, I don't.

10 Q. To your knowledge were you his only dentist from  
11 the time you first treated him to approximately May  
12 of '82?

13 A. No, he had dental work before then.

14 MR. MALONE: Listen to the  
15 question. She asked you during that  
16 time frame?

17 A. No, no; not during that time, no.

18 Q. So during the time that you treated him in those 20  
19 to 30 years, to your knowledge you were his only  
20 dentist?

21 A. Right.

22 Q. Were you on a first name basis with him?

23 A. I thought.

24 Q. You considered him a friend?

25 A. Very much.

1 Q. He called you Pete?

2 A. Yes.

3 Q. You called him Lou?

4 A. Yes.

5 Q. what condition were Lou Oliver's teeth when he  
6 first saw you?

7 A. Now, there were several spots that I can remember.  
8 He had, in fact this is a good example.

9 Q. Now you are referring to what what has previously  
10 been marked Plaintiff's Exhibit Five?

11 A. Yes. This tooth should have been extracted, but it  
12 was there when he first came in.

13 Q. What tooth are you referring to?

14 A. It's the upper right first molar and there were  
15 other teeth also, you know, that were, like the  
16 root irradiation there.

17 Q. That was present when you first saw him?

18 A. Oh, yes.

19 Q. Any other problems that you noted at that time,  
20 that you recall?

21 A. Not offhand.

22 Q. When we are referring to Plaintiff's Exhibit five,  
23 do you recall when you constructed this? Would  
24 that have been, I'm going to ask you the question.  
25 Do you recall when you constructed that model?

1 A. To the best of my knowledge ■ think '81?

2 Q. Do you recall when in '81 you constructed that?

3 A. Possibly October.

4 Q. Now, do you recall anything else in this model  
5 that, or that is visualized on this model that was  
6 present before, at the time Lou Oliver first came  
7 to see you?

8 A. In that--.

9 MR. MALONE: You mean anything  
10 else by way of a problem because some of  
11 these teeth --

12 MS. KOEPPER: By way of a  
13 problem. I'm sorry.

14 A. In the upper left cuspid area had an existing  
15 bridge. It, was problematical there. On the lower  
16 right there was a bridge. That was problematic and  
17 lower left, also.

18 Q. When you say "problematical", can you explain what  
19 you mean by that?

20 A. Possible complications, you know.

21 Q. Do you recall, specifically?

22 A. Decay.

23 Q. What did you do about it then?

24 A. Try and correct it.

25 Q. How did you try to correct these problems?

1 A. First try and get some of the decay there and see  
what happened there.

3 Q. So are you again saying you proposed some fillings  
4 or --

5 A. Well like --

6 Q. What did you do?

7 A. Like the existing little crowns that he had which I  
8 remember were gold with flecks. This was decay  
9 along the side there. You could see trouble  
10 starting. There was gold on both bottoms.

11 Q. Are you talking about a time approximately 20 or 30  
12 years ago?

13 A. Yes, yes.

14 Q. What, again, did you do at that time when he first  
15 came to you to try and correct the problems that  
16 were then and there existing?

17 A. Try to get rid of the decay there.

18 Q. How? This time I really would like to know what  
19 you did?

20 A. Well, like it would be along the gingival margin  
21 there.

22 Q. And, specifically, what did you do along this line?

23 A. Removed the decay.

24 Q. Are you saying you prepared fillings, then?

25 A. Right.

1 Q. And would those be visualized on any of the X-rays  
2 that you took?

3 A. No. Well, no. Those eventually were removed.

4 Q. Asking you about the exhibit which has been marked  
5 Plaintiff's Exhibit Three--

6 A. Yeah.

7 Q. --and which appears to bear the date of 1/77.

8 Would that refer to January '77?

9 A. Good. Here's the lower right. See in--

10 Q. Referring, when holding the exhibit with the tag at  
11 the top facing you, you are talking about the left  
12 upper?

13 A. Lower right down here; lower right.

14 Q. Could you point to it?

15 A. Right there.

16 Q. That would be the left lower?

17 A. Actually, it's actually lower right side of the  
18 mouth.

19 Q. And what does that demonstrate, doctor?

20 A. Well, that decay is starting in there, right in  
21 through there and some of it's hidden by the gold.

22 Q. Now--

23 A. Likewise here.

24 Q. Are you saying there's still decay present in the  
25 lower right side of the mouth in January of '77?

1 A. No. I think, what do you call it, started to  
2 correct that because it recurred, recurred.

3 Q. You had started to correct it?

4 A. Yes.

5 Q. When Lou Oliver first came to see you?

6 A. Yes.

7 Q. 20 years ago?

8 A. Yes.

9 Q. And then it had recurred in '77?

10 A. Yes.

11 Q. Can you, on this exhibit, note any problems that  
12 you recall were existing at the time Lou Oliver  
13 first came to see you?

14 A. Top left area, I mentioned cuspid area.

15 Q. The top left of the mouth you are referring to?

16 A. Yes, with that upper right.

17 Q. When looking at the exhibit in the same fashion  
18 with the tag at the top, it would be the right  
19 upper?

20 A. Upper.

21 Q. Now what problems were present there in the cuspid  
22 area?

23 A. Decay.

24 Q. Is this also an area that you had attempted to  
25 correct?

1 A. Yes.

2 Q. And which recurred?

3 A. Yes.

4 Q. What efforts had you made to attempt to correct it?

5 A. Try to remove the decay.

6 Q. Is there anything else, any other problems that are  
7 Visualized here?

8 A. Lower left. 'Those were all existing.

9 Q. Lower left side of the mouth again?

10 A. Correct.

11 Q. visualized in the X-ray, right?

12 A. Right below that, uh-huh.

13 Q. Right below the one previously described?

14 A. Uh-huh.

15 Q. What does that show?

16 A. Decay.

17 Q. Around what teeth?

18 A. The molar there.

19 Q. Which molar?

20 A. Lower left; second, I think.

21 Q. Is this also an area you had corrected previously?

22 A. Yes.

23 Q. And which recurred. Anything else that we've  
24 missed on this exhibit?

25 A. Not that I can think of. Those three areas.



1 Q. Do you recall in 1977 when you took these X-rays  
2 dated January '77 what corrective, what additional  
3 treatment you provided in that area? Since we  
4 don't have the records, can you recall?

5 A. Yeah. Well, just like I say, you know, try to  
6 fight the decay. Oh, also-- excuse me. There's,  
7 what do you call it, broken tooth there, that  
8 bicuspid.

9 Q. Referring to the upper left X-ray which is the  
10 right side of the mouth?

11 A. Right, yes. Right there. That is a broken tooth.

12 Q. What did you do about this broken tooth?

13 A. You can see a root canal was started there.

14 Q. Do you do that?

15 A. Yes.

16 Q. Root canal work? And did you continue to treat  
17 that, too?

18 A. Tried to, yes.

19 Q. How did you treat that tooth, other than root  
20 canal?

21 A. With a root canal, you know.

22 Q. Do you recall any other treatment that you provided  
23 to Lou Oliver in this period of time for which your  
24 records are lost from approximately 20, 30 years  
25 ago to 1980?

1 A. I don't, I missed you. Would you repeat?

2 Q. Do you recall any other treatment that you provided  
3 to Lou Oliver in this period of time?

4 A. Yes.

5 Q. From when you first started treating him --

6 A. Yes.

7 Q. -- to the time of 1980 apparently when you again  
8 resumed making a record?

9 A. Uh-huh, Well, like on that top left area, if I  
10 recall correctly, we tried treating abscess,  
11 definitely.

12 Q. How do you try to do that?

13 A. Drainage, antibiotics and I knew that there's a  
14 problem there, you know.

15 Q. And did you try any other remedies, at all?

16 A. Well, just try and, you know, just what I said.

17 Q. In this period of time, from the time Lou Oliver  
18 first came to you--

19 A. Yes.

20 Q. --To 1980, did Lou Oliver maintain a regular recall  
21 schedule for general cleaning with you, twice, at  
22 least twice a year?

23 A. Pretty much so,

24 Q. Did he sometimes even come more often to see you?

25 A. If needed, yes.

1 Q. Did he not come to you many times complaining of  
2 loose teeth and pain during that period of time?

3 A. Not pain. But definitely whenever he had the  
4 situation we would try and help him.

5 Q. I understand that in approximately 1970 you  
6 constructed some bridge work for him?

7 A. Yes.

8 Q. Can you recall the circumstances leading up to the  
9 requirement for this bridge work?

10 A. Well, there were spaces there and we were going to  
11 try and make, you know, complete the space, close  
12 spaces.

13 Q. Could you describe then what prosthetic device you  
14 constructed?

15 A. Right there.

16 Q. Are you referring to--

17 A. These two bridges, yes.

18 Q. You are referring to Plaintiff's Exhibit Number  
19 Four?

20 A. Yes.

21 Q. And you're pointing to the left lower--

22 A. Right.

23 Q. --X-ray?

24 A. Uh-huh. We construct a bridge from this bicuspid.

25 Q. What does the bridge consist of; is it an

1 artificial tooth and some device that holds the  
2 tooth to the other teeth?

3 A. Exactly, to abutment, the abutment would be the  
4 molar and bicuspid replacing the area, the missing  
5 area.

6 Q. So you filled in the gap with an artificial tooth  
7 and attached that tooth on the other existing  
8 teeth?

9 A. Yes.

10 Q. And you did that on Mr. Oliver's lower left side?

11 A. Yes.

12 Q. And lower right side?

13 A. Yes.

14 Q. And did you do any other?

15 A. Upper left side.

16 Q. Upper left side?

17 A. Yes.

18 Q. How many teeth were replaced on the upper left  
19 side?

20 A. I'm not sure, but I think three; at least three,  
21 possibly four.

22 Q. And the lower left?

23 A. One, two, three and on the lower right, one two,  
24 three four, two missing teeth. But a four unit.

25 Q. And the lower left were there three missing teeth?

1 A. One.

2 Q. One missing tooth and it was a three unit?

3 A. No, no; two missing teeth and a four unit.

4 Q. And again referring you to the X-rays obtained on,  
5 which appear to be obtained on October '81 and  
6 marked Exhibit 4, does that show any abscesses  
7 present in any teeth?

8 A. Yes.

9 Q. Which teeth?

10 A. In the upper anterior, upper area.

11 Q. Do you have a habit of referring to teeth by their  
12 names or by numbers?

13 A. Both.

14 Q. Can you give the number of the tooth or the teeth  
15 that appear to have abscesses?

16 A. Upper left central, upper left lateral -- I mean  
17 upper left central-- excuse me, and upper left  
18 cuspid.

19 Q. You are referring to two teeth?

20 A. Yes, from what I recall here.

21 Q. Now what is the condition of those abscesses; are  
22 they advanced or at an early stage, can you tell by  
23 looking at that?

24 A. Early stage I would say, yes.

25 Q. Now your office records were destroyed over the New

1 Year, '79 to '80?

2 A. Yes.

3 a. How did that happen?

4 4. Fourth floor above me dentist left his unit wide  
5 open and it happened over a weekend and it was for  
6 two or three days.

7 Q. What is that dentist's name?

8 1. Plent.

9 2. How do you spell that?

10 1. P-l-e-n-t.

11 2. And were all your dental records destroyed for all  
12 patients?

13 A. No, no not all of them, but especially where the  
14 flood was, most of it. It took us two days to  
15 clean the water, the water, what is--never mind.

16 I. Were all of them Lou Oliver's records--

17 A. Most of them.

18 I. --destroyed?

19 A. Yes, most of them.

20 Q. When you say "most of them", are you referring to  
21 what you have--

22 A. What you have here.

23 Q. --is left. Prior to January of 1980 the only  
24 records you really brought were X-rays dated 1977;  
25 is that correct?

1 A. Yes, now this was found, yes.

2 Q. Were all written records destroyed?

3 A. Yes, mostly that.

4 Q. Are any records still available which would show

5 the dates that Lou Oliver--

6 A. I doubt it.

7 Q. --came to see you? I'm talking about appointment

8 books?

9 A. We don't save appointment books, no.

10 Q. Payment records?

11 A. No, because Mr. Oliver always paid cash.

12 Q. Did you record his payment in payment books of some

13 kind?

14 A. I must, yes.

15 Q. So do you have a record available of payment books?

16 A. Like a day sheet, yes.

17 Q. How far back would you have those?

18 A. I would have to look, yes. I don't know at the

19 time.

20 Q. So you would be able to reconstruct a record for

21 some period back in time that showed the dates that

22 Lou Oliver was there to see you?

23 A. Yes.

24 Q. It wouldn't necessarily show what treatment was

25 provided--

1 A. Thank you.

2 Q. --on those dates. If you are asked to provide such  
3 a record, will you provide such a record of all the  
4 dates that Lou Oliver has been there?

5 A. I'll try, yes.

6 Q. Now, referring you to Plaintiff's one, One-A and  
7 Two, is this then a reconstructed record, in part?

8 A. Yes.

9 Q. For treatments that you provided prior to January  
10 18 of 1980?

11 A. Yes.

12 Q. Was January 18, 1980.

13 MR. MALONE: There's no  
14 reference to January of, January 18, 1980.

15 MS. ROEPPER: Yes, there is. I  
16 beg to differ with you.

17 MR. MALONE: There's an  
18 explanation of the flood but there's no  
19 record of treatment before those dates,  
20 Engeline.

21 Q. Referring you to what has been marked Plaintiff's  
22 Exhibit's two, is there a notation of bridge work  
23 having been made in upper left approximately 1970  
24 and bridge lower right and left made approximately  
25 mid-1970?



1 A. Fine.

2 Q. Is this not like a, what you recall having provided  
3 to him?

4 A. Yes.

5 Q. And you simply made a notation of that?

6 A. Yes.

7 Q. In this record?

8 A. Yes.

9 Q. If I said one construction?

10 A. You made it sound as if this was attempts of  
11 reconstruction; the old office records, I  
12 understand there's reference, that's just what  
13 happened New Year's Eve '79.

14 Q. Then you attempted to recall what you have done?

15 A. Yes.

16 Q. And you didn't go into detail about all of the  
17 fillings or all of this?

18 A. No.

19 Q. Did you indicate on this record on Exhibit 2 and on  
20 Exhibit 1 in what appears to be a diagram of  
21 a--what is it 32 teeth?

22 A. Uh-huh.

23 Q. What kind of problems did Mr. Lou Oliver exhibit as  
24 to his teeth?

25 A. Well, with the question marks.

1 Q That, I want to ask you about those notations and  
2 I'm talking about the marks in black, I think, that  
3 are made on or near what appear to be red--

4 Yes.

5 Q. -- outlines of teeth?

6 Okay.

7 Q would that have numbers above and below them?

8 Could you, by this notation on Exhibit 1, tell me  
9 what your notations mean?

10 Questionable teeth, eight, I mean; 9, 10, 11, 12.

11 Questionable teeth 28 and 29, in through there.

12 Around there are always Xs, indicated--

13 Missing.

14 Those are missing teeth?

15 Yes.

16 So when you are referring to tooth number one was  
17 missing, 16 was missing, 32 was missing and 17 was  
18 missing; those are the wisdom teeth?

19 Thank you.

20 Is that correct? And there's also number 31  
21 missing?

22 Yes.

23 And 20 and 19?

24 Good.

25 Is there any, when did you make this record, do you

1 recall? Or these notations on this card?

2 A. No, I don't.

3 Q. Was it in January of 1980?

4 A. Possibly, yes.

5 Q. I do not see any indication about any missing upper  
6 teeth on this record. Was Lou Oliver not --

7 A. No, they are not missing.

8 Q. They are not missing?

9 A. No, they are to be extracted.

10 Q. And this was as of January 18, 1980 according to  
11 this record?

12 A. Yes.

13 Q. He still had all of his upper teeth?

14 A. Yes, just the way the model is.

15 Q. Again referring you to Exhibit number One, the  
16 horizontal lines that are drawn through several  
17 teeth on the upper end on the lower portions, does  
18 that indicate your bridge work?

19 A. No, that's a temporary crown.

20 Q. And you had temporary crowns placed on the teeth  
21 where you have horizontal lines indicated?

22 A. No. These are missing teeth and then those--

23 MR. MALONE: Horizontal side to  
24 side.

25 Q. By horizontal, I mean this?

1 A. This is a bridge, yes.

2 Q. That indicates bridge work done?

3 A. Yes.

4 Q. And what is your indication for temporary crown?

5 A. Well--

6 Q. As you just mentioned then. The word "t-e-m-p"?

7 A. Thank you, right.

8 Q. And again, if you recall, was this notation, were  
9 these markings on this chart made approximately  
10 January of 1980; if you recall?

11 A. Recall, yes.

12 Q. would that indicate the condition then on that date  
13 of Mr. Oliver's teeth?

14 A. Approximately, yes.

15 Q. Now, again referring you to Exhibit 2, which would  
16 be the second card here, your notations, after  
17 office flooded are radiographs and exam  
18 prophylaxis, et cetera. There are no dates  
19 indicated next to that notation. Did you obtain  
20 any new X-rays made after the flooded happened?

21 A. No, this is --

22 Q. So, in other words, you first-- according to this  
23 record--you first saw Lou Oliver on January 18,  
24 1980 after the flood had occurred; is that correct?  
25 According to this record?

1 A Fine, yes.

2 Q And at that time there's also here a notation in  
3 what appears to be a stamp of radiographs and exam,  
4 prophylaxis, et cetera and a charge of 20 dollars.  
5 Were X-rays obtained on that date, according to  
6 this record?

7 A Oh, this is, no, this is what you call a form stamp  
8 and it's not checked off.

9 Q So what of that form stamp did you conduct on that  
10 date?

11 A Possibly prophylaxis and in fact we used to do  
12 fillings and prophylaxis and everything else and I  
13 wouldn't even charge him.

14 MR. MALONE: Doctor, just  
15 answer her question. She wants you to show,  
16 the stamp shows radiographs and exam and  
17 prophylactics, et cetera and \$20 charge. What did  
18

19

20

21

22

23 A. Possibly.

24 Q. And on January 18, 1980 you have also made a  
25 comment on here "rampant decay"?

26 A. Yes.

1 Q. There was no other indication of any treatment on  
2 that day. Does that indicate there was none given  
3 then?

4 A. No, there might have been; yes.

5 Q. But you did not keep a record of it?

6 A. No.

7 Q. According to this Exhibit 1 again the next time you  
8 saw Lou Oliver was June 5th, 1980?

9 A. Yes.

10 Q. And according to this you did a prophylactic~~is~~ on  
11 that date and you charged him \$10?

12 A. Yes.

13 Q. Is it possible that between January 18, 1980 and  
14 June 5th, 1980 Lou Oliver might have come in for  
15 treatment, bridge adjustment, which you did not  
16 record?

17 A. It's possible.

18 Q. The next notation on this Exhibit 1 is March 3,  
19 1981 with a notation of office visit and a charge  
20 of--can you tell me what you charged him on that  
21 date?

22 A. That's \$200; that's \$200.

23 Q. What was the charge of 200 for?

24 A. We tried to redo one of the bridges.

25 Q. Is that what the notation just below that office

1 visit indicates?

2 A. Yes.

3 Q. So for readjusting a bridge you charged \$200?

4 A. Well, rebuilding it.

5 Q. Was this all done in that one day or would it have  
6 entailed--

7 A. No.

8 Q. A come-back visit?

9 A. Yes, if we didn't mark it down it would have, yes.

10 Q. So it's very likely that he came in on another  
11 occasion--

12 A. Yes.

13 Q. --to have the bridge work inserted and without you  
14 marking it down?

15 A. Yes.

16 Q. And can you tell me what the next notation of  
17 8/15/81 is. I cannot quite read it?

18 A. Propy .

19 Q. And before that? I can read the propy?

20 A. Probably some more -- operative.

21 Q. Can you read that writing?

22 A. It's probably operative. O-p-e-r.

23 Q. And what would be entailed on the operative propy?

24 A. Fillings.

25 Q. And you charged him?

1 .. Twenty.

2 !. \$20 for that?

3 .. Uh-huh.

4 !. Your next notation on that record appears to be  
5 October?

6 .. 8 --

7 !. Of '82?

8 .. No, no. '81; I think it should be '81 because the  
9 one below it is '81.

10 !. And on that date you have a notation of okay, first  
11 of all you do not give an exact date in October.  
12 Just October and approximate dates are just October  
13 and--

14 .. Right.

15 !. --a year that looks like '82 but you believe it's  
16 '81?

17 .. Yes.

18 !. And the notation next to that is impressions and  
19 parentheses partials?

20 .. Right.

21 !. Did you not on that date write down the exact date  
22 when you did this work or did you make this record  
23 later?

24 .. Possibly not, no. But the impressions were taken,  
25 to the best of my knowledge, in October of '81.



1 Q. And the impressions that were taken were then sent  
2 to a laboratory and this mold was made from those  
3 impressions?

4 A. Fine; top and bottom.

5 Q. That you took on October of '81?

6 A. (Nodding head)

7 Q. So we are referring to Exhibit five?

8 A. Right.

9 Q. This is the mold then that resulted from an  
10 impression you took on October of '81?

11 A. Now. Now, if one is an, yes, impression I took but  
12 in fact he'll -- we took more than one and the one,  
13 these were destroyed when they make them. When  
14 they make them this is destroyed.

15 MR. MALONE: Doctor, she just  
16 had asked you when you made Exhibit five.

17 Q. When was this made?

18 A. Ten, '81.

19 Q. The very last notation on this Exhibit 1, seems to  
20 be the date of 12/5/1?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. What is the notation next to that? I cannot read  
25 that, either?

1 A. Try to recement them, temporarily. 'Cause his  
2 bridge would loosen. So tried to recement them  
3 until these could be completed.

4 Q. And is that what you did on that day?

5 A Yes.

6 Q. And that was December fifth of 1981?

7 A Yes.

8 Q. And charge for that was \$30?

9 A. Whatever, it's marked there, yes.

10 Q. Now are we talking about bridge work that you,  
11 yourself, had constructed in 1970?

12 A. Yes.

13 Q And was it not, in fact, very frequent that Mr.  
14 Oliver's bridge would loosen and he would come to  
15 you and have you tighten it and work on it?

16 A Yes.

17 Q. Over all those years from '70 to '82?

18 A Yes.

19 Q And you had charged him when you first constructed  
20 this bridge?

21 A Yes.

22 Q. And then you charged him each time you adjusted it  
23 or sometimes you would charge him and sometime you  
24 wouldn't?

25 A Thank you, yes.

1 Q. And sometime you would make a record of it and  
2 sometimes you wouldn't?

3 A. Right, yes.

4 Q. Now on the back side of this index card, Mr.  
5 Malone--

6 MR. MALONE: You can call it  
7 a recipe card if you like.

8 Q. Exhibit 1 and on the back it's marked Exhibit 1-A.  
9 there's a notation dated January 16, 1982 with the  
10 further notation "final impression" next to that.  
11 Is that when Mr. Oliver came to your office and you  
12 obtained final impressions of him?

13 A. Now--

14 Q. Where was the model, if any, on that impression  
15 taken?

16 A. I might correct myself. This is probably the model  
17 because these had already been taken and these were  
18 already made. See? If I can remember correctly.

19 Q. For the record, let's see if I can understand this.  
20 You are now saying that Exhibit Number five was  
21 constructed in '82?

22 A. This starts to make sense.

23 Q. January of '82?

24 A. Yes, that was that final date there.

25 Q. And you are saying that these upper and lowers--

1 A. Were made in '81.

2 Q. Are these partials?

3 A. Yes, ma'am.

4 Q. So when you are referring to Exhibit 6 we are  
5 talking about a lower--

6 A. Yes.

7 Q. -- partial?

8 A. Uh-huh.

9 Q. That, you are saying was constructed in '81 or  
10 when?

11 A. Yes. All right.

12 Q. I wasn't there. When did you construct Exhibits 7  
13 and 8?

14 A. I knew in 10/81 they had to have partial' -- he had  
15 to have partial.

16 MR. MALONE: Doctor?

17 THE WITNESS: Yes.

18 MR. MALONE: Please listen to  
19 her question. She asked you when Exhibits  
20 Seven and Eight, when the partial dentures  
21 were made?

22 A. Right.

23 Q. When?

24 A. 10/81.

25 Q. And you are saying that what we have as Exhibit

1 Five was constructed--

2 A. Final impression.

3 Q. --was constructed in '82?

4 A. Not made.

5 Q. Made in '82?

6 A. When was --

7 Q. In January of '82 yes.

8 Q. And that's considered a final, was the final  
9 impression, the mold that was made from the final  
10 impression that you took?

11 A. Right.

12 Q. Is it common practice to take a final impression  
13 with all kinds of abscess teeth still present in  
14 the mouth?

15 A. Now, these are considered what would you call  
16 them--

17 MR. MALONE: Doctor, never mind  
18 that. Answer her question, please. Would  
19 you take an impression with an abscess  
20 present?

21 THE WITNESS: Because this would  
22 be an intermediate.

23 MR. MALONE: Never mind.

24 Q. Final impression?

25 A. I would take one, yes.

1 Q. You would construct a partial?

2 A. A temporary.

3 Q. A temporary?

4 A. Yes.

5 Q. And what was, it your intention to do with this  
6 final impression then?

7 A. Oh, when you had your extraction you can't let the  
8 patient go bare so you got to have something to  
9 wear between that and your permanent bridge.

10 Q. So these Exhibits Seven and Eight were partials

11

12

13 A. While he was, yes, while he was healing.

14 Q. But had you extracted any teeth?

15 A. No, no 'cause you couldn't leave them bare.

16 Q. Referring you to the last entry on Plaintiff's  
17 Exhibit 1-A, on the back side of the first index  
18 card, can you tell me what that date is?

19 A. 5/82; May '82.

20 Q. What date in May of '82?

21 A. It could be eight.

22 Q. Could be 18?

23 A. Eight or 18; could be.

24 Q. And next to that the word "canceled"?

25 A. Uh-huh.

1 Q. "Went elsewhere"?

2 A. Uh-huh.

3 Q. Now, is that the date that he had an appointment or  
4 is that the date he called and canceled a future  
5 employment?

6 A. That's the day he canceled.

7 Q. To your knowledge did he cancel or did someone else  
8 call your office and cancel?

9 A. I think Simko did,

10 Q. Now, on that date or thereabouts were you informed  
11 that Mr. Oliver had indeed nine abscessed teeth?

12 A. I heard, yes. I could have verified it.

13 Q. And, again, you took impressions on January 16 1982  
14 which you call final impressions. Is it good  
15 dental practice to take final impressions of a  
16 mouth with that many abscess teeth that need  
17 extraction?

18 A. If you have them.

19 MR. MALONE: Doctor, this calls  
20 for a yes or no.

21 Q. Just answer yes or no?

22 A. Yes.

23 Q. That's good dental practice to do that?

24 MR. MALONE: Asked and  
25 answered.

1 MR. MALONE: Tell her, yes.

2 You've already answered once?

3 A. Yes.

4 Q. After Mashemko called your office to cancel Mr.  
5 Oliver's appointment did you then contact Lou  
6 Oliver, personally?

7 A. Very much so.

8 Q. Did you then tell him something to the effect, Lou,  
9 we have been friends; don't do this, I'll do all  
10 the work for nothing; you don't have to pay me  
11 anything?

12 A. That's how hurt I was yes.

13 Q. But you said those things?

14 A. Yes.

15 Q. In other words, you agreed to do all the work that  
16 would be necessitated by Lou Oliver for free of  
17 charge?

18 A. That's what I thought of him, yes.

19 Q. Was it because you were so hurt or you felt--

20 A. Hurt.

21 Q. -- you had not given him good care?

22 A. Hurt, really hurt.

23 Q. Do you believe that you gave Lou Oliver the best  
24 care that a reasonable, prudent dentist could have  
25 given him?



1 A. I tried.

2 Q. Do you believe that you did?

3 A. Yeah, I tried, yes.

4 Q. That's not the question I asked you.

5 MR. MALONE: He answered, yes.

6 MS. KOEPPER: He didn't answer,  
7 yes. He said he tried.

8 MR. MALONE: Then he said, yes.  
9 She will read it back to you, I'm sure.

10 MS. KOEPPER: Did you get that  
11 down, the yes?

12 Q. Earlier in your testimony you stated that there  
13 were two teeth already in October 12--I'm sorry,  
14 October 1981, as demonstrated on Plaintiff's  
15 Exhibit four--that demonstrated abscesses; is that  
16 correct?

17 A. Oh, yes.

18 Q. Why did you not at that time refer Mr. Oliver for  
19 root canal work to--

20 A. They were beyond--

21 Q. --attempt--

22 A. Beyond that.

23 Q. They were beyond that?

24 A. Yes.

25 Q. In October of '81?

1 Q. Yes.

2 Q. Now, your X-rays were not destroyed in your office,  
3 were they?

4 Q. Yes.

5 Q. With the exception of these these that you brought  
6 in 1977?

7 Q. Yes.

8 Q. And of course after January of 1980 there were no  
9 records destroyed; is that correct?

10 Q. I should, I don't think so, no.

11 Q. Now, the first set of X-rays you obtained of Lou  
12 Oliver after the flood was in October of '81 which  
13 was nearly two years after the flood had occurred;  
14 is that correct?

15 Q. '80.

16 Q. A year and ten months?

17 Q. It was actually '80; it was New Year's.

18 Q. But it was '79 to '80, January of 1980 when Mr.  
19 Oliver first came to see you after the flood  
20 occurred, according to your own records?

21 Q. To the best of my knowledge.

22 Q. And at that time you didn't take any X-rays; is  
23 that correct?

24 Q. (No response)

25 Q. Even though all of your records of his treatment--

1 A. Possibly not, no.

2 Q. As a matter of fact, you didn't take any X-rays for  
3 another year and ten months of Lou Oliver after the  
4 flood?

5 A. No, not a year and ten months because these are  
6 '81.

7 MR. MALONE: Doctor, January of  
8 1980 to January of '81 is a year.

9 THE WITNESS: Right.

10 MR. MALONE: January of '81 to  
11 October of '81 is how long?

12 THE WITNESS: I see, okay.

13 MR. MALONE: Listen and  
14 concentrate on these questions; they are not  
15 that complicated.

16 THE WITNESS: Okay.

17 Q. So isn't it a fact after the flood had occurred  
18 even though your entire record of Mr. Oliver had  
19 been lost or destroyed you did not take any X-rays  
20 of his mouth until a year and ten months until  
21 after the flooded occurred?

22 A. No.

23 Q. As a matter of fact, he came to see you within a  
24 few days after the flood had occurred?

25 A. Yes .

1 Q. Now with a person having problems as you stated  
2 with decay, wouldn't it be incumbent on you to take  
3 X-rays even more so of him on a regular basis at  
4 least on a six months interval basis than on  
5 someone with no problems or no serious problems?

6 A. Yes.

7 Q. And you did not do so, did you?

8 A. No, I didn't.

9 Q And you stated earlier that on X-rays you can see  
10 the early signs of a cavity or possibly by visual  
11 examination you cannot see such a sign?

12 A.. Sometimes, yes.

13 Q. And early removal of decay and restoration prevents  
14 further decay in that tooth; does it not?

15 A Not necessarily .

16 Q. Well, for a time being?

17 A. Time being,

18 Q!.. Unless it you said it recurs?

19 A. Yes.

20 Q. Wouldn't the prudent thing be to get the decay  
21 treated as early as possible, a cavity treated as  
22 early as possible?

23 A.. Yes ,

24 Q. So Mr. Oliver went for a year and ten months, at  
25 least, according to your records, without the

1 benefit of recent X-rays that demonstrate onset or  
2 progression of decay; is that correct?

3 A. But he had treatment.

4 Q. Cleaning?

5 A. No, no. No, no. Every time he come in he would  
6 have two, three, four cavities, please.

7 Q. Your records don't indicate that?

8 A. Please believe, you can ask him.

9 Q. Isn't it a fact, though, that most of the time when  
10 Mr. Oliver came to you he would have complained  
11 about loose teeth or loose bridge work?

12 A. Not most time. When he come, you know--

13 Q. When he would come other than his regularly  
14 scheduled appointment?

15 A. Yes,

16 Q. Did he not come to you very frequently about  
17 complaints that his bridge work was loose and  
18 needed readjustments?

19 A. Yes.

20 Q. And you constantly had to readjust those bridges;  
21 is it not a fact?

22 A. Yes.

23 Q. Did you not even tell his sister that Lou was  
24 always complaining about his bridge work?

25 MR. OLIVER: No, no, Julie.

1 THE WITNESS: That's not his  
2 sister.

3 Q. Who's Julie?

4 MR. MALONE: Did anybody else  
5 ever tell you?

6 THE WITNESS: I don't know who  
7 Julie is.

8 MR. MALONE: Doctor, listen.  
9 You have to concentrate on this lady's  
10 questions. Never mind what Mr. Oliver says  
11 or did. Never mind anybody else. Listen to  
12 those questions and if you don't understand  
13 them, tell this lady and she will rephrase  
14 them. When you do understand them, answer  
15 them. That's all.

16 THE WITNESS: Okay.

17 Q. All I'm asking you is, did you not even tell Lou's  
18 sister when she came in that Lou was always  
19 complaining?

20 A. I never told Lou's sister that, never.

21 Q. But you know for a fact that he did complain about  
22 loose bridge work, he couldn't eat, his teeth were  
23 loose?

24 A. Yes.

25 3. And that has gone on for a period of more than ten

1 years; hasn't it?

2 A. Yes.

3 Q. Wouldn't good dental practice indicate to you that  
4 something more had to be done than just readjusting  
5 his bridges?

6 A. Yes.

7 Q. But that didn't occur to you until January of 1982?

8 A. Long ago, before then.

9 Q! Why did you not do anything sooner?

10 A. Because he's so handsome and I couldn't bring to  
11 tell him that he's going to have to have a partial;  
12 that's the honest-to-gosh truth.

13 Q! Is that the kind of standard that good dental care  
14 would impose on a dentist?

15 A. Oh no, no.

16 Q. But you followed, you follow good dental care  
17 practice; do you not?

18 A. Yes, but there was a personal, I don't know what  
19 you'd call it.

20 Q. You went against your own medical or dental  
21 standard then of what good care would have  
22 required?

23 A. Yes.

24 Q. Is it not true that had Mr. Oliver been given the  
25 best dental care he could have saved many of those

1           teeth that eventually had to be extracted?

2                       MR. MALONE:                       We don't have any  
3           idea what was extracted because you refused  
4           to give him his care subsequently. I'm not  
5           going to let him answer that question I don't  
6           know whether he has had any extractions.

7 Q.       Have you ever made the statement to Lou Oliver  
8       perhaps early in your treatment of him, when he  
9       would ask you or in response to his question, how  
10      are my teeth, Doc or Pete--

11 A.      Uh-huh.

12 a.      --you would say, they are great; they will last you  
13      a lifetime?

14 A.      Oh, no.

15 Q.      You never said that to him? Isn't it a fact you  
16      said it every time he asked you, how are my teeth?

17 A.      No, I wouldn't say that, no.

18 2.      But did you say it?

19                       MR. MALONE:                       Asked and  
20      answered, How many times do we have to go  
21      through this? He has told you, no, he didn't  
22      say that.

23 4.      He could tell he was going to have problems.

24                       MR. MALONE:                       Doctor, just wait  
25      for questions.



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THE WITNESS: Okay.

Q. You, yourself, stated that the X-rays taken b  
of January--

A '81.

MR. MALONE: October '81.

Q --October '81 show teeth that were really beyond--

A. Yes\*

Q. Endodontal care or crown work or anything?

A. (Nodding head)

Q Should those teeth then have been removed?

A. Yes.

Q. But you did not remove them?

A. No.

Q And by not removing them, did it not cause more  
dental problems for Mr. Oliver or more periodontal  
problems for Mr. Oliver by leaving them in his  
mouth?

A Well, possibly, yes.

Q Possibly or probably, yes?

A Probably yes. Thank you.

Q. And the stage where some of those teeth were in,  
crown was destroyed, the whole tooth was abscessed?

A. Yes.

Q Would this not cause pain in a person?

A. Very likely.

1 Q. Did Mr. Oliver not even complain to you of pain  
2 that his teeth hurt?

3 A. Actually, no. He'd, he'd say he would have  
4 discomfort, but he didn't cry. He didn't cry. He  
5 never cried.

6 Q. What did you expect him to do, cry?

7 A. No, no: I don't mean that. But he never, he never  
8 hollered or anything like that say, Jeeze.

9 Q. But he called you and said, can I come on over?

10 A. And I would say, yes.

11 Q. You wouldn't expect people to call you out of their  
12 regular appointment time unless they were having  
13 problems?

14 A. Right.

15 Q. And dental problems hurt; don't they?

16 A. Which were cared for.

17 Q. In the condition that Mr. Oliver's teeth were in in  
18 January of 1980, and again in October of 1981 when  
19 you took X-rays, could good home dental care have  
20 done anything about his rampant decay at that time?

21 A. Considering his condition, I wouldn't know.

22 Q. As a matter of fact it wouldn't have made the decay  
23 get any better by, at that point by, cleaning his  
24 teeth regularly: would it?

25 A. Possibly. Possibly.

1 Q. Does tooth decay become less over time or does it  
2 get worse?  
3 A. All depends on the individual.  
4 Q. With or without care?  
5 A. True.  
6 Q. Without brushing?  
7 A. With or without care and the individuals.  
8 Q. Is this what you were taught in dental school that  
9 tooth decay can get better, can become less over a  
10 period of time?  
11 A. No, no never gets better, no.  
12 Q. That was my question?  
13 A. No, no; it can't.  
14 Q. So at the point when you noted rampant decay in  
15 January of 1980--  
16 A. Yeah.  
17 Q. Whatever amount of brushing Mr. Oliver would have  
18 done at home wouldn't have corrected the problem,  
19 would it?  
20 A. Would have helped.  
21 a. It would have helped prevent further decay?  
22 A. Yes.  
23 Q. But it would not have corrected the problem that  
24 already existed?  
25 A. No.

1 Q. That required good dental care on your part; did it  
2 not?

3 A. Dental care, yes.

4 Q. Or your referring him to another dentist?

5 A. (Nodding head)

6 Q. Is that correct?

7 A. Correct.

8 Q. Now, I understand that you had some health problems  
9 and I'm sorry to hear that, but you mentioned that  
10 you were taken ill?

11 A. Yes, when he had an appointment.

12 Q. And when was that?

13 A. He called around, what was it Christmas time, and I  
14 had pneumonia in Shaker Medical.

15 Q. When was that? As I said, I'm sorry.

16 A. I don't know exactly offhand.

17 Q. December what year is all I'm asking?

18 A. 80? Was it 80. The health records are there.

19 Q. I'm just asking if you recall what year you had the  
20 pneumonia?

21 A. No, I don't recall.

22 Q. So it was December of 1980, to the best of your  
23 recollection?

24 A. Yes.

25 Q. Could it have been December '81?

1 A. '81, yes. Thank you.

2 Q. Was that the only, how long were you absent from  
3 the office that time?

4 A. A week, approximately; more than a week,  
5 approximately a week.

6 Q. Did you have measures taken that another dentist  
7 could see your patients in your absence?

8 A. It was a little confusing. There could have been,  
9 yes, if--

10 Q I'm saying did you, yourself, take measures?

11 A Oh, yes,

12 Q . So that if your patients called and had an  
13 emergency--

14 A . Yes.

15 Q -- that they would go elsewhere?

16 A Yes.

17 Q Where were they instructed to go in your absence?

18 A There's several doctors in the building, dentists.

19 Q Again, did you make specific arrangements with a  
20 dentist?

21 A . Yes.

22 Q. Who was that?

23 A. Doctor Ussis.

24 Q. How do you spell that?

25 A. Is that right, Dr. Ussis, U-s-s-i-s.

1 Q. And his first name?

2 A. Val,

3 Q. And you mentioned in the--is this the Osborne  
4 Building?

5 A. Yes.

6 Q. And your recollection is that this was in December  
7 of '81 that you had pneumonia?

8 A. To the best of my recollection, yes.

9 Q. Was this the only time that you were ill that you  
10 were required to be away from your work for more  
11 than a day at a time?

12 A. That involves Mr. Oliver.

13 Q. Are you sure several years ago, seven or eight  
14 years ago you were not ill, as well, and Mr. Oliver  
15 had to go elsewhere then?

16 A. I don't recall,

17 Q. I'm asking you.

18 MR. MALONE: He has answered.

19 Q. Have you ever had any counseling or treatments for  
20 any alcohol abuse or drug abuse?

21 A. Never.

22 Q. I'm not trying to embarrass you; I just want to  
23 know whether there was a problem--

24 A. No.

25 Q. --in your providing dental care to your patients

1           because of illness?

2   A.       Never.

3   Q.       So other than this one-week or two-week absence you  
4           did not have any health problems that kept you away  
5           from your practice?

6   A.       Kidney stone 20 years ago.   Please.

7   Q       We will try to just make this brief now.   In  
8           January of 1980, after the flood, when you first  
9           started to make a record again, for Mr. Oliver, and  
10          you noted rampant decay, did you then do any  
11          further testing to discover the extent of the decay  
12          of the problem that Mr. Oliver had other than the  
13          notation you didn't even take any X-rays, but you  
14          made notation--

15   A.       I knew the problem, yes.

16   Q       Do you recall the last time previous to January of  
17           1980 that Mr. Oliver had been in your office prior  
18           to the flood?

19   A.       Definitely he was in, but I don't know when.

20   Q       Do you know how long that rampant decay had been  
21           present prior to the flood?

22   A       Years .

23   Q       How many years?

24   A       20 years or more.   He's always had a problem.

25   Q.       Was it worse after the bridge work had been

1 constructed by you, after 1970?

2 A. I can't say.

3 Q. Does improper bridge work or loose bridge work  
4 cause irritation on the gums?

5 A. Oh, yes.

6 Q. Does that in itself lead to inflammation and  
7 eventual infection?

8 A. Possible.

9 Q. And that can lead to periodontitis or per-- I can't  
10 even --

11 MR. MALONE: Periodontal  
12 disease.

13 Q. Periodontal disease?

14 A. Yes.

15 Q. So loose appliance in the mouth, which Mr. Oliver  
16 had for many years in, itself, was cause for  
17 irritation and eventual periodontal disease in Mr.  
18 Oliver?

19 A. Possible yes.

20 Q. Possibly or even probably?

21 A. Probably.

22 Q. Do you have dental malpractice insurance, doctor?

23 MR. MALONE: Objection. Answer  
24 is, yes. Insurance company is Medical  
25 Protective of Fort Wayne, Indiana.



1 MS. KOEPPER: I have that. I  
2 would like the limits.

3 MR. MALONE: It's one hundred.

4 Off the record.

5 (Thereupon a discussion was had off the record)

6 . In spite of all of these things that you've just  
7 stated, that you constructed the bridge work,  
8 and, -- several bridges, actually; lower left,  
9 lower right, upper left--

10 . (Nodding head)

11 . Which were loose and gave Mr. Oliver considerable  
12 problems and which you said probably contribute to  
13 periodontal disease, and in spite of your not  
14 having taken X-rays according to your own schedule  
15 and determined the earliest possible onset of  
16 decay, is it still your opinion that you gave Mr.  
17 Oliver the good dental care that you know good  
18 standards require?

19 MR. MALONE: Did you understand  
20 the question.

21 THE WITNESS: I don't know how  
22 to--

23 MR. MALONE: She is asking you  
24 if you were a good dentist for Lou Oliver?

25 . I tried.

1 MR. MALONE: Answer is yes or  
2 no.

3 A. I tried.

4 MR. MALONE: You have said yes  
5 some four or fewer times already.

6 A. Yes.

7 Q. At all times?

8 A. At all times.

9 Q. Is it possible that you didn't succeed at times?

10 A. Yes.

11 Q. So what you are saying is you tried but you may not  
12 have succeed?

13 A. Right.

14 MR. KOEPPER: I only have one  
15 other thing; that is as to signature. Does  
16 the doctor waive?

17 MR. MALONE: I ordinarily make  
18 him read and sign it, but in this case we  
19 will waive it for you; doesn't matter.

20 - - -

21 Signature waived

22

23

24

25

State of Ohio ) SS.  
County of Cuyahoga)

CERTIFICATE.

I, Susan W. Talton, a Registered Professional Reporter and Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the within named witness, PETER E. CARFAGNA, D.D.S. was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid; and that this swpoairion was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 1984.



Susan W. Talton, R.P.R. Notary Public

My commission expires February 25, 1985.