

IN THE MATTER OF:  
THOMAS D. WAIS, D.D.S.  
Complaint Number 290116

TRANSCRIPT OF PROCEEDINGS

ARIZONA STATE BOARD OF DENTAL EXAMINERS

INVESTIGATIVE INTERVIEW OF THOMAS D. WAIS, D.D.S.

OCTOBER 16, 2009

TRANSCRIBED BY:

LORENE F. SAMSON, CSR #1830

APPEARANCES:

ARIZONA STATE BOARD OF DENTAL EXAMINERS:

THOMAS W. ROGERS, D.D.S., CHAIRPERSON

ALLAN D. JOHNSON, D.D.S.

CHARLES BROWN

FOR DR. WAIS:

SCHNEIDER & ONOFRY, P.C.

BY: SUSAN I. McLELLAN, ESQ.

LICENSEE:

THOMAS D. WAIS, D.D.S.

1                   OCTOBER 16, 2009; 9:00 A.M.

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4           UNIDENTIFIED SPEAKER:  It's recording.

5           DR. ROGERS:  Is it?

6                   This proceeding is being held on October 16th  
7 at 9:00 a.m., and it's being tape recorded.

8                   Please speak loudly and clearly.  Only one  
9 person may speak at a time.

10                   This proceeding is conducted pursuant to  
11 A.R.S. 32-1263.2(c) regarding Complaint Number 290116  
12 filed against Dr. Thomas D. Wais.

13                   As a Panel we'll refer to the person by his or  
14 her initials.  They're not -- that's the Board.

15                   My name is Thomas W. Rogers.  I'm Chairperson  
16 of this Panel.

17                   Will the other members identify themselves.

18           DR. JOHNSON:  Dr. Allan Johnson.

19           MR. BROWN:  Charles Brown.

20           DR. ROGERS:  Will everyone else please identify  
21 yourself for the record.

22           DR. WAIS:  Thomas Wais.

23           MS. McLELLAN:  Susan McLellan, Counsel for  
24 Dr. Wais.

25           DR. ROGERS:  This proceeding is to determine the

1 validity of the allegations contained in the Complaint  
2 and Notice of Hearing.

3           The Panel will take testimony, receive  
4 evidence, and prepare findings of fact and conclusions  
5 of law regarding this Complaint.

6           The Panel will determine if the facts  
7 presented substantiate a violation of the Dental  
8 Practice Act or any rules, regulations, promulgated by  
9 the Board.

10           The Panel will only address the allegations as  
11 defined by the laws governing the practice of dentistry  
12 in Arizona.

13           The Panel may consider and review patient  
14 records during this investigative interview, which  
15 include clinical records, medical records, laboratory  
16 statements, reports, files, films, and all statements  
17 relating to diagnostic opinions in the case.

18           This information is not available to the  
19 public and will remain confidential; and since the  
20 Complainant's not here, I don't think I have to read  
21 that.

22           The Panel, after deliberating the facts in  
23 open session, will make recommendations pursuant to  
24 A.R.S. 32-1263.02(c) to the Board of Dental Examiners  
25 for the disposition of this Complaint.

1           These recommendations may be as follows:  
2 Dismiss the matter due to lack of supporting evidence;  
3 issue a letter of concern. If the Panel determines a  
4 violation of the Practice Act it may recommend  
5 any -- any one of or a combination of the following  
6 disciplinary actions: One, censure; two, restitution;  
7 three, probation; four, restriction of practice; five,  
8 continuing education; six, administration penalties;  
9 seven, community service; eight, formal hearing to  
10 determine the possible suspension or revocation of a  
11 license.

12           The Board at a public meeting will review the  
13 Complaint, records, and documentation received and  
14 reviewed and this Panel's report recommendation.

15           The Board may accept this Panel's  
16 recommendations, add to the recommendations, or the  
17 Board may formulate their own findings of fact,  
18 conclusions or law, and issue an Order different than  
19 our recommendations.

20           In the event that sanctions are recommended, a  
21 copy of this Panel's finding of fact, conclusions of  
22 law, and recommendations will be made available to the  
23 Licensee pursuant to A.R.S. 32-1263.02(c)4.

24           All participants have the opportunity to  
25 address the Panel. Please do not quote in length from

1 the dental records. Complaint or other documents are  
2 already before the Panel.

3 The Panel will have an opportunity to question  
4 any witness present. The Licensee and Complainant may  
5 ask the questions through the Chairperson. After all  
6 input has -- input has been received the Panel will  
7 deliberate and formulate its findings. No additional  
8 information or interruptions may be permitted.

9 The Panel has the authority pursuant to  
10 A.R.S. 32-1263.02(g) to receive testimony under oath.  
11 All those persons who will be testifying please raise  
12 your right hand to be sworn in.

13 Do you affirm that the testimony you are about  
14 to provide is the truth, the whole truth, and nothing  
15 but the truth, so help you God?

16 DR. WAIS: I do.

17 DR. ROGERS: And that is Dr. Wais.

18 I will now read a synopsis of the Complaint  
19 and the allegations I listed on the Notice of Hearing  
20 (unintelligible).

21 (Unintelligible dialogue, multiple speakers.)

22 DR. ROGERS: While receiving a malpractice report  
23 at the April 3rd, 2009, Board Meeting, the Board voted  
24 to open a case against Dr. Thomas D. Wais -- am I  
25 pronouncing your name right? Wais?

1 DR. WAIS: Wais. It's Wais (pronouncing).

2 DR. ROGERS: Wais. I'm sorry.

3 -- for alleged failure to diagnose and treat  
4 TMJ problems for Patient R.B.; that synopsis is a  
5 condensation of the actual written Complaint, and it  
6 quotes or paraphrases statements, made by the patient in  
7 describing their Complaint.

8 The basic allegations: "Inadequate History  
9 and Clinical Inadequate Radiographs," "Inadequate  
10 Diagnosis," "Inadequate Treatment Planning," "Failure to  
11 Diagnose," "Inadequate TMJ Treatment."

12 Allegations 1, 2, 3 and 4 are routine blanket  
13 allegations assigned to each Complainant by the Board to  
14 cover the methods of treatment rendered the patient.

15 The additional allegations are derived from  
16 the patient's Complaint.

17 So, Dr. Wais, uh, would you like to give us a  
18 summary of what your version of the story is.

19 DR. WAIS: Sure. Uh, I think it would be  
20 worthwhile just for me to just give a little  
21 introduction about myself, simply because, uh -- for  
22 background information.

23 Uh, I've been a dentist since 1972. Um, I've  
24 been doing, uh, TMJ treatment since 1976. Uh, I was a  
25 visiting faculty member of the Pankey Institute for a

1 couple years. Uh, I studied with Henry Tanner  
2 (phonetic) a -- a long time, and, uh, I was trained in  
3 straight-wire orthodontics, uh, that I did for a while  
4 and realized that I couldn't continue that.

5 Uh, I did some perio training at the  
6 University of Iowa. I studied with Terry Tanaka  
7 (phonetic), Pete Dawson, Alvin Flastery (phonetic),  
8 Harold Gelb (phonetic), Rudolph Slavacec (phonetic), Tom  
9 Basta at The FACE Institute. Had, uh, ultrasound  
10 training with, uh, the Piper Dopplex.

11 I'm a Fellow of the Misch Implant Institute.  
12 Um, I've gone through OBI training. I'm been with Jimmy  
13 Eubank (phonetic), who is another, uh, person who's  
14 a -- does TMJ treatment; and, uh, (unintelligible)  
15 Pearsom (phonetic); and, uh, I'm currently an IB  
16 Conscious Sedation Examiner for the State.

17 So what, um, I would like to share with you  
18 about Ro- -- uh, a patient's case is that he was  
19 referred to me by his wife, who we treated for TMJ  
20 treatment and subsequently referred to an orthodontist.

21 Uh, he came in. Uh, he noted that his mouth  
22 was comfortable but that the truth is, as we examined  
23 him, he had tremendous headaches and what we would call  
24 a myriad of -- of TMJ symptoms as dentists.

25 We have those annotated in the chart, and, uh,



1 we can show a reference to that if you'd like to have  
2 that.

3           So, uh, with the, uh, initial examination, uh,  
4 by palpation, Dopplex, a standard full-mouth set of  
5 X rays, discussion with the patient at length, um, we,  
6 uh, determined that he indeed has -- had some myofascial  
7 pain dysfunction is what I would call it, myofascial  
8 pain dysfunction syndrome, and we decided to, uh, work  
9 with him with an appliance, appliance therapy.

10           So, um -- and he was informed about, uh, at  
11 that particular time, in the beginning, about what could  
12 happen with this appliance. In this particular  
13 technique, uh, that I was using, uh, and wanted to  
14 use -- it's not any different than any other dentistry  
15 in respect that I'm -- I wanted to get him to centric  
16 relation.

17           So, uh, I found with the experience that I've  
18 had that 24/7 wear of the appliance is the best thing,  
19 uh, and that's what he was instructed about and  
20 requested to do. That's what his wife did.

21           So, uh, we started working with him and had,  
22 uh, success in regards to, uh, getting him more  
23 comfortable.

24           Uh, one of the problems in the case was that  
25 the, uh, gentleman has, uh, two homes, one here and one

1 in Colorado, so six-months' flip, so that complicated  
2 things, but we were making progress.

3           So, uh, we got him reasonably comfortable, and  
4 then he went home.

5           The problem that I see in hindsight about that  
6 is that it's difficult to have a patient gone and have  
7 appliance therapy, uh, in an -- in their mouth. The  
8 appliance can wear down. Uh, it's problematic, uh, but  
9 I've had success with other cases that had two  
10 residences, so I -- it did not bother me. I have  
11 several other cases that, um, I can relate to that they  
12 have dual residences, and we've, uh, had good results.

13           Uh, so, um, Robin's -- excuse me -- the  
14 patient's case, um, uh, was such that we, uh, got to the  
15 point where I felt that we'd go ahead with hinge axis  
16 determination, and we did a thing called, uh, CPI which  
17 is basically determining that the joint is home, uh, by,  
18 um, making three different bite relationships, different  
19 vertical dimensions, using the instruments that -- that  
20 helps us tell whether that joint is indeed in the same  
21 position at those different vertical dimensions, uh,  
22 which is in the chart as well.

23           Uh, so, uh, after doing that, uh, uh, we -- I  
24 did a diagnosis in regards to the models that you see.  
25 Uh, the hinge axis model that you see there -- his teeth

1 do not fit well together; uh, and what I decided to do  
2 was do a diagnosis in relationship to what I felt was  
3 the best thing for him in regards to actual size of the  
4 teeth and, uh, how to rebuild the mouth, what you see in  
5 the wax-up.

6           The wax-up was done. Uh, then we discussed  
7 this with the patient at length. Uh --

8           DR. JOHNSON: What date was the wax-up done?

9           DR. WAIS: Excuse me?

10          DR. JOHNSON: At what point of the treatment was  
11 the wax-up done there?

12          DR. WAIS: Uh, do you want a date?

13          DR. JOHNSON: Um, from start to finish or, you  
14 know, what -- what point?

15          DR. WAIS: Um...

16          DR. JOHNSON: Was that in the beginning, or, uh --

17          MS. McLELLAN: (Unintelligible).

18          DR. JOHNSON: -- uh, that was -- was this after  
19 your -- when the crown and bridge was ready to be  
20 started?

21          DR. WAIS: Near when the crown and bridge was ready  
22 to be started, after he got comfortable, after we did  
23 the CPI, after, uh, we -- you know, I don't do any of  
24 that until the patient is comfortable and, uh,  
25 indicating that we could go ahead; and, so, uh, we can

1 find that for you and date it if you'd like to have  
2 that, but that's --

3 DR. ROGERS: So at the time the wax-up was done,  
4 you had the patient's musculature comfortable, joint was  
5 comfortable --

6 DR. JOHNSON: And you felt he was stabilized?

7 DR. WAIS: I did. Yes, I did, with the CPI,  
8 because the CPI -- if we look at the CPI, all the dots  
9 are on top of each other, uh, Doctor.

10 DR. JOHNSON: And was his BP (phonetic) relatively  
11 pain-free or --

12 DR. WAIS: Yes, yes, because, uh, uh, I wouldn't go  
13 ahead with this unless he -- unless he was. You know, I  
14 mean, it's -- the -- the wax-up is too costly. You  
15 know, uh -- going ahead with treatment's too risky. Uh,  
16 it'd be foolish.

17 DR. JOHNSON: Okay.

18 DR. WAIS: And, I mean, it's just --

19 MS. McLELLAN: Okay. What did you do after that  
20 point?

21 DR. WAIS: Uh, after the wax-up was done, I -- we  
22 had a consultation with the patient. Uh, he decided to  
23 go ahead with treatment.

24 Uh, at that point, uh, what I do is I stop and  
25 we determine that we're gonna crown all the teeth. Uh,

1 we took all the old restorations off, uh, to clean up  
2 the teeth. Uh, as you know, we can't see everything  
3 under the crown, so I took those off, put temporaries  
4 back on after I based up all the teeth and cleaned them  
5 up. Then --

6 DR. ROGERS: This vertical with this wax on it is a  
7 model for your temps? Is that what you did?

8 DR. WAIS: Uh, not the first set of temporaries.  
9 First set of temporaries I used his teeth, the way that  
10 they were, like on the, uh, hinge axis.

11 DR. ROGERS: Okay.

12 DR. WAIS: Okay. Uh, just too much work.

13 Then, uh, I put those models, the -- in his  
14 mouth, and then we adjusted that, uh, adjusted the  
15 occlusion, comfortable, uh, and then waited until a  
16 certain point.

17 Uh, I don't like to take a bite relationship  
18 when he's numb, so I back off of that and bring him back  
19 in, take the temporaries off, take a bite relationship,  
20 send it to the lab. The lab starts building the case.

21 In his particular case we put the lower -- the  
22 restorations were made. We put the lower in.

23 He came back. We tried in some of the upper  
24 crowns. Uh, I wanted another bite relationship, so we  
25 took another bite relationship, sent that back to the

1 laboratory, and then the final crowns were made. We  
2 seated the crowns, uh, and then, uh, adjusted the  
3 crowns, and then he went back to Colorado I think was  
4 the progression.

5 Um, we also made him a nightguard appliance.

6 DR. ROGERS: Was he comfortable after the crowns  
7 were seated?

8 DR. WAIS: Uh, relatively, yes --

9 DR. ROGERS: Okay.

10 DR. WAIS: -- um-hmm.

11 Um, he, uh, started to have symptoms of  
12 discomfort and, uh, head and neck discomfort, uh, that  
13 were confusing. Uh, basically, um, I -- he came back  
14 with those symptoms. I adjusted MAGOs; I tried other --  
15 uh, worked with him with that. I adjusted his  
16 occlusion; um, and I realized at this point that there,  
17 um -- I'm getting close to the end here, so --

18 DR. ROGERS: Thank you.

19 DR. WAIS: Sorry. It's a long case.

20 DR. ROGERS: That's all right.

21 DR. WAIS: Uh, it's, um -- I adjusted his occlusion  
22 for a long time, uh, asking him to wear the, uh -- the  
23 appliance full time again, because with the teeth the  
24 way that they're built we need full-time wear to really  
25 determine what's happening.

1           Well, he was confusing. I referred him to  
2 several other specialists to help to figure out what's  
3 going on with this man; and as, um, we were adjusting  
4 these appliances, um, it just didn't make sense. I'd  
5 never had this problem with anybody else.

6           So long and short of it was, um, I started  
7 adjusting his teeth with the thought, you know, "I'm  
8 gonna have to redo this case," because the -- I was  
9 adjusting more than I wanted to, but something wasn't  
10 right. It just didn't make sense.

11           So I come to find out towards the end that he  
12 actually was noncompliant with the appliance and not  
13 wearing it as he said he was. He -- he -- he  
14 basically -- my assistant and I both thought he was  
15 wearing it. He (unintelligible) -- he'd wear it into  
16 the office. He said he was wearing it, and he wasn't.

17           Uh, in this particular technique, it's -- it's  
18 very important to have utilization of the appliance.

19           So what I did -- uh, at that particular point  
20 he went to Piper, uh, in Florida to get a consult.  
21 Piper sent me a letter back. Said he should have more  
22 of a CO type of appliance. I built him a CO type of  
23 appliance. He just --

24           DR. JOHNSON: Did you send him to Piper, or did he  
25 just go?

1 DR. WAIS: No. He found it on his own.

2 DR. JOHNSON: Okay.

3 DR. WAIS: Um-hmm. Um, I didn't think that  
4 I -- there was a need for Piper at that point because  
5 what had hap- -- what would happen that was  
6 confusing -- we'd adjust and he'd get comfortable for  
7 two or three days, and then he'd come back.

8 Well, um --

9 DR. ROGERS: When you say you'd adjust, you were  
10 re-corroborating (phonetic) him?

11 DR. WAIS: Yes, sir.

12 DR. ROGERS: And did you have -- as far as how you  
13 found centric, was it -- a many plated (phonetic)  
14 centric or was it a -- like a cois (phonetic)  
15 deprogrammer-type centric or as orthopedically self-  
16 seated joint?

17 DR. WAIS: I used a deprogrammer. I tried all  
18 those techniques --

19 DR. ROGERS: Okay.

20 DR. WAIS: -- to answer your question.

21 DR. ROGERS: So you didn't feel he was locked in  
22 the front, like --

23 DR. WAIS: No.

24 DR. ROGERS: It was the Piper letter that I read.  
25 Wanted to give him more freedom. I know.



1 DR. WAIS: Yeah. And so what I did, when I got  
2 that letter from Piper, is I built him another appliance  
3 and gave him that freedom, and it's total flat plane.

4 DR. ROGERS: And then how was he?

5 DR. WAIS: He didn't like that either.

6 One of the -- um, should I mention  
7 (unintelligible), the therapist?

8 MS. McLELLAN: You can -- you can mention your  
9 referrals that -- uh, 'cause you have alluded to the  
10 referrals that you made, so I think that's important.

11 DR. WAIS: Um, I referred him initially to a  
12 physical therapist by the name of Paul Root (phonetic),  
13 who had had some experience with TMJ, who -- quite  
14 extensive experience -- and I'd found him, uh, through  
15 another referral, and Lori Lazarus (phonetic), who's  
16 another physical therapist who focuses on TMJ. Paul  
17 Root couldn't figure him out.

18 Um, I consulted with a colleague, uh, another  
19 TMJ guy, uh, frequently about the case that's familiar  
20 with that. And then I referred him to a clinical  
21 hypnotherapist.

22 Uh, I also referred him to Dr. Barry Molina  
23 (phonetic), who is a cranialsacral -- cranialsacral  
24 physician who -- I got a referral from Lori Lazarus  
25 about -- excuse me -- about -- about him because he's

1 had apparently good success with her TMJ referrals to  
2 him.

3 Um, I also sent him to a homeopathic, uh,  
4 physician, an M.D., who I thought might be able to give  
5 him some help.

6

7

8

[REDACTED BY PLAINTIFF]

9

10

11

That's the -- that's basically the end of it.

12

13

He left the practice, uh, about at that same  
point, got upset and angry, and, uh --

14

15

DR. ROGERS: And he was upset and angry because he  
felt you weren't getting to his problem?

16

DR. WAIS: Yeah. Uh, we did our --

17

18

DR. ROGERS: (Simultaneous, unintelligible) was  
moving or no?

19

DR. WAIS: Pardon me?

20

DR. ROGERS: He moved to Colorado again?

21

DR. WAIS: No.

22

23

MS. McLELLAN: Well, he -- he would split his year  
between Arizona and Colorado, so that was just his  
normal routine --

24

25

DR. ROGERS: Okay.

1 MS. McLELLAN: -- or life.

2 DR. WAIS: Um-hmm.

3 DR. JOHNSON: Did a hypnotherapist, um, say  
4 anything about a -- other problems that he was having  
5 relative to stress or anything like that --

6 DR. WAIS: It, uh --

7 DR. JOHNSON: -- other than just his ex?

8 DR. WAIS: No. He was retired. 52-year-old and  
9 retired and multiple, uh, golf -- he's a golfer but  
10 he -- he told us that he -- he didn't like to play golf,  
11 but he was a member of three -- three country clubs.

12 (Laughter and simultaneous unintelligible  
13 dialogue of participants.)

14 MS. McLELLAN: (Simultaneous, unintelligible) lot  
15 of time on his hands.

16 DR. WAIS: And so, you know, um --

17 DR. JOHNSON: Too much time on his hands.

18 MS. McLELLAN: Yeah.

19 DR. ROGERS: Maybe it's not all it's cracked up to  
20 be.

21 DR. WAIS: Uh, it was baffling.

22 DR. ROGERS: And so then a lawsuit ensued?

23 DR. WAIS: Yes, sir.

24 DR. ROGERS: Okay. And do you know --

25 DR. WAIS: That was a different -- no -- no -- no

1 lawsuit. A demand letter, uh, was --

2 DR. ROGERS: Okay.

3 DR. WAIS: -- generated by him --

4 DR. ROGERS: Right.

5 DR. WAIS: -- which I turned over to the insurance  
6 company.

7 Um, I did not have a lawyer at that time.

8 DR. JOHNSON: What was the demand letter? Or  
9 what -- what, basically, did the demand letter say?

10 DR. WAIS: He wanted his money back.

11 DR. ROGERS: Okay.

12 DR. JOHNSON: Okay.

13 MS. McLELLAN: Plus the money for --

14 DR. WAIS: No, he didn't ask for that, now --

15 MS. McLELLAN: -- before getting (simultaneous,  
16 unintelligible) --

17 DR. WAIS: He didn't ask for that in the -- in  
18 the -- at fir- -- no, he didn't.

19 DR. ROGERS: Then you did not have a lawyer, and  
20 you sent it to the insurance company.

21 DR. WAIS: I sent it to the insurance company, and  
22 I would never do that again. Um --

23 DR. ROGERS: You would first get a lawyer.

24 UNIDENTIFIED SPEAKER: Get a lawyer first  
25 (simultaneous, unintelligible) --

1 DR. WAIS: Yeah.

2 Well you know, I didn't realize that I needed  
3 somebody to help me, protect me, against the insurance  
4 company --

5 DR. ROGERS: (Unintelligible). Okay.

6 DR. WAIS: -- so I was -- you know, I talked to  
7 so -- I talked to some friends. I acted as my own  
8 lawyer, essentially, and they said, "Just settle."

9 DR. ROGERS: Really?

10 DR. WAIS: Yeah. Settle --

11 DR. ROGERS: So you just settled without any kind  
12 of --

13 DR. WAIS: No consult with a lawyer.

14 DR. ROGERS: -- depositions? Nothing happened?  
15 Nothing?

16 MS. McLELLAN: That's correct. It was all at --

17 DR. JOHNSON: And so the settlement was a --

18 MS. McLELLAN: -- the claim stage with the  
19 insurance company.

20 DR. JOHNSON: Because the insurance company  
21 just -- just turned around and says, "Why don't we just  
22 settle this and give him 'X'?"

23 DR. WAIS: Well, you know what happened? They  
24 got --

25 DR. ROGERS: The number is huge.

1 DR. WAIS: I know. It drives me crazy --

2 DR. ROGERS: But to do so with them, just do  
3 that -- it surprises me that they would want to  
4 not -- at least --

5 DR. WAIS: If they --

6 DR. ROGERS: They didn't want to investigate?

7 DR. WAIS: It blew me away. I didn't -- see, I had  
8 no knowledge that they were gonna give him \$200,000. I  
9 signed off on it --

10 MS. McLELLAN: (Simultaneous, unintelligible), and  
11 that's a confidential number, so --

12 DR. WAIS: Oh. Sorry.

13 UNIDENTIFIED SPEAKER: Well --

14 MS. McLELLAN: -- (simultaneous, unintelligible)

15 you do that --

16 UNIDENTIFIED SPEAKER: -- we haven't got  
17 (unintelligible) paper --

18 MS. McLELLAN: I -- I realize that, but this is all  
19 public (simultaneous, unintelligible) --

20 DR. ROGERS: -- (simultaneous, unintelligible) yes.

21 UNIDENTIFIED SPEAKER: Yes.

22 DR. WAIS: I'm sorry.

23 MS. McLELLAN: Yeah.

24 DR. WAIS: Um, that -- that was very depressing.

25 You know, it was depressing, number one, that I -- that

1 I couldn't get -- uncomfortable because I've never had  
2 that happen.

3 DR. ROGERS: Okay. And because of the settlement  
4 that's why you're here.

5 And do you have more to add, Susan, or...

6 MS. McLELLAN: I don't, unless you need, um,  
7 specific references to pages and --

8 DR. ROGERS: We might, as we go through our --

9 MS. McLELLAN: Yes.

10 DR. ROGERS: -- deliberation. That might help us  
11 (unintelligible) --

12 MS. McLELLAN: Okay. And --

13 DR. ROGERS: If we're hunting and pecking you help.

14 MS. McLELLAN: Sure.

15 Uh, when Dr. Wais, uh, submitted his records  
16 up in the top right-hand corner he -- he wrote numbers  
17 there, so I don't have the same Bates numbers down at  
18 the bottom like you all have --

19 DR. ROGERS: (Simultaneous, unintelligible) --

20 (Several simultaneous speakers,  
21 unintelligible.)

22 MS. McLELLAN: But between the -- between the two  
23 sets I think we'll be able to find things.

24 DR. ROGERS: Oh, I see. Okay. I see his numbers.  
25 His numbers are clearer than the (unintelligible) ones.

1 MS. McLELLAN: I know. Sometimes the ones at the  
2 bottom get cut off.

3 DR. ROGERS: Yeah, I know.

4 Okay. So if there's nothing further -- do you  
5 have any questions for (unintelligible) at all?

6 UNIDENTIFIED SPEAKER: Um-um.

7 MR. BROWN: Do you know the amount of, uh, cost for  
8 the treatment?

9 DR. WAIS: \$79,000. 79,000 and change.

10 MR. BROWN: This was almost three years of  
11 treatment, right?

12 DR. WAIS: Yeah. It --

13 DR. JOHNSON: All the adjustments were included in  
14 the basic fee for the splint and all that?

15 DR. WAIS: Um-hmm. Um-hmm. Yes, sir.

16 MR. BROWN: Well, that's -- that's everything  
17 (unintelligible) -- I

18 DR. ROGERS: If -- go ahead. I'm sorry.

19 MR. BROWN: So the payment was made upfront, and  
20 then all this side work was done --

21 DR. WAIS: Uh --

22 MR. BROWN: -- after you (simultaneous,  
23 unintelligible) --

24 DR. WAIS: -- well, it wasn't made upfront. I  
25 don't --



1 DR. ROGERS: As alleged --

2 MS. MCLELLAN: Yeah --

3 DR. WAIS: As -- as he -- as he -- as he went  
4 through treatment he would pay sections of it. Okay.

5 MS. MCLELLAN: Okay. Paid a certain amount, um,  
6 for the splint, the initial splint that was delivered.  
7 Um, in April of 2004 he paid an amount for that splint;  
8 and then, you know, at different stages or phases you'll  
9 see a treatment plan where it's, um, set forth in  
10 phases, and then he paid at different phases, and then  
11 when it came to the restorative time that was a -- a  
12 separate payment for the restorative.

13 DR. WAIS: I've done several of these cases before,  
14 and the -- uh, the total chair time to do this  
15 complexity takes about 50 hours at chair. And I spent a  
16 lot more time with him trying to help him, so it -- it's  
17 a prolonged process, but it's a beautiful result when  
18 it's finished.

19 MR. BROWN: Okay.

20 DR. ROGERS: Okay. If anybody -- no one has  
21 anything further, we'll go through and, uh, go through  
22 our process. This is where he can't really put any  
23 input --

24 UNIDENTIFIED SPEAKER: That's all right --

25 DR. ROGERS: -- but we might ask you where the

1 (unintelligible) or something, okay?

2 So --

3 DR. JOHNSON: Okay. Basic allegations are:

4 "Inadequate History and Clinical."

5 DR. ROGERS: There is definitely a history and  
6 clinical, here, Health History, Page 3 --

7 MR. BROWN: Health History also, 11 to 13, 19,  
8 signed and dated.

9 DR. ROGERS: Okay. Okay. Next --

10 UNIDENTIFIED SPEAKER: Wait. Hold it.

11 DR. ROGERS: Oh. Was it "History and Clinical," or  
12 just "History"?

13 DR. JOHNSON: Well, I -- I'm -- right now I'm just  
14 writing out (unintelligible) "History." There's a  
15 clinical TMJ on Page 17 and 18 --

16 DR. ROGERS: But he also has "Periodontal  
17 Charting" --

18 DR. JOHNSON: And "Periodontal Charting" is on  
19 Page 21 --

20 DR. ROGERS: Right.

21 DR. JOHNSON: -- initial 23 and 25 --

22 DR. ROGERS: Right.

23 DR. JOHNSON: So let me get all of this down here  
24 now.

25 MR. BROWN: So he has a -- (unintelligible) not

1 a -- let me say (unintelligible) -- so is it up to  
2 minimum standards, as far the history --

3 DR. ROGERS: It's well beyond minimum standards.

4 DR. JOHNSON: Um, there's a med- -- you know,  
5 "Medical History" on Page 19.

6 DR. ROGERS: It's a very thorough chart.

7 MR. BROWN: It -- it looked like it to me, but --

8 DR. ROGERS: Yeah. Way more than most people would  
9 ever do.

10 DR. JOHNSON: Okay. That's the "History and  
11 Clinical."

12 Next, uh, one is "Inadequate Radiographs."

13 DR. ROGERS: There's a lot of radiographs. We  
14 have --

15 MR. BROWN: And a graph --

16 DR. ROGERS: (Unintelligible) a panoramic film  
17 from March 31st, '05.

18 DR. JOHNSON: With a --

19 DR. ROGERS: I should (unintelligible) --

20 DR. JOHNSON: Of --

21 DR. ROGERS: March 31st, '05.

22 DR. JOHNSON: And --

23 DR. ROGERS: You have tomograms March 31st, '05,  
24 from the right and the left.

25 DR. JOHNSON: What date?

1 DR. ROGERS: On March thirty- -- March 31st.

2 I don't know what you call this view.

3 What do you call this view?

4 MS. McLELLAN: What do you call that view?

5 DR. WAIS: I'm sorry, Doctor. I can't see it from  
6 here.

7 I'm (unintelligible) --

8 (Several unintelligible conversations.)

9 DR. WAIS: It's so (unintelligible) --

10 UNIDENTIFIED SPEAKER: Yeah.

11 DR. ROGERS: (Unintelligible) a film from  
12 March 31st, '05.

13 There's (unintelligible) to mention that one.

14 DR. JOHNSON: Still '05?

15 DR. ROGERS: Uh, yeah. He's got open -- different  
16 positions of the jaw. He has -- and these tomos  
17 (unintelligible) -- (unintelligible) closed. I just  
18 don't (several unintelligible words).

19 DR. JOHNSON: Did you do anymore, um, X-rays after  
20 the initial five?

21 DR. WAIS: Excuse me?

22 DR. JOHNSON: Did you take anymore, uh, TMJ X-rays  
23 after the '05 initial?

24 DR. WAIS: No, because, uh, there's a -- a --  
25 a -- David Hatcher has an opinion in the chart, uh,

1 dental radiol- -- radiography -- a radiologist; and,  
2 basically, he had some sclerotic stress to his joints,  
3 but everything was fine. There's no pathology. There  
4 was no reason to. He had no -- he had no symptoms of  
5 any de- -- any degenerative problems in the joints.

6 DR. ROGERS: No capsule problems?

7 DR. WAIS: No.

8 DR. ROGERS: The -- um, what do you call that  
9 (unintelligible)?

10 UNIDENTIFIED SPEAKER: I think -- (unintelligible)  
11 is there --

12 DR. ROGERS: No. Is there (unintelligible)?

13 DR. WAIS: Uh-huh.

14 DR. ROGERS: Submental?

15 DR. WAIS: ~~Submental vertex. Submental vertex.~~

16 DR. ROGERS: Submental vertex.

17 (Unintelligible) a series. And  
18 (unintelligible) refers to a four.

19 And this, uh, January 15th, '08 -- is this  
20 post -- post-treatment?

21 DR. WAIS: Um-hmm.

22 DR. ROGERS: Panoramic --

23 DR. WAIS: 10/15/08, um-hmm.

24 DR. ROGERS: This post-treatment panoramic --

25 DR. WAIS: Um-hmm.

1 DR. ROGERS: '08?

2 DR. WAIS: Um-hmm.

3 DR. ROGERS: January of eight -- '08?

4 This is another repeat. Seems like we have  
5 only the one panel (unintelligible).

6 DR. WAIS: Could be. Could be.

7 DR. ROGERS: Okay.

8 DR. JOHNSON: Just like it was (simultaneous,  
9 unintelligible) --

10 DR. ROGERS: So, uh, all the diagnostic  
11 (unintelligible) --

12 DR. JOHNSON: All (unintelligible).

13 DR. ROGERS: (Unintelligible); okay?

14 DR. JOHNSON: You used the term "diagnostic." Um,  
15 they got the (unintelligible) of diagnostic quality --

16 DR. ROGERS: I'm done with (unintelligible).

17 And now he has none.

18 (Participants laughing.)

19 DR. ROGERS: Okay.

20 DR. JOHNSON: Okay. "Inadequate Diagnosis."

21 And "Diagnosis" on Page 30 -- pull that up.  
22 (Unintelligible).

23 He's got a -- a long letter that represents  
24 the entire treatment plan.

25 DR. ROGERS: From Page 27 --

1 DR. JOHNSON: 27 to 30 --

2 DR. ROGERS: -- to 30, but that's not the  
3 diagnosis.

4 DR. JOHNSON: But there is a diagnosis inside that  
5 treatment plan --

6 DR. ROGERS: There is. It's in there.

7 DR. JOHNSON: (Simultaneous, unintelligible) Page  
8 30.

9 DR. ROGERS: There's also -- I believe earlier in  
10 the chart there was a diagnosis all over the place,  
11 right? But that (simultaneous, unintelligible).

12 DR. JOHNSON: (Unintelligible).

13 Is there another page where there's a  
14 diagnosis within it, particular -- within his treatment,  
15 um, uh, treatment plan?

16 DR. ROGERS: There are --

17 MS. McLELLAN: I think the letter sets forth most  
18 of it. There's, um, you know, for a dent- -- just the  
19 restorative -- um, you know, on the page that -- where  
20 he placed his existing restorations he just -- does show  
21 that there's a fracture on 26.

22 DR. JOHNSON: What page is that on?

23 MS. McLELLAN: Um -- well, it's my Page 11.

24 DR. JOHNSON: Okay. (Simultaneous,  
25 unintelligible) --

1 MS. McLELLAN: It looks -- it looks like  
2 (simultaneous, unintelligible) --

3 DR. ROGERS: Which would be Page 20. Page 20.

4 MS. McLELLAN: And then at the time of, um, initial  
5 restoring he does make a diagnosis of decay on a couple  
6 of the teeth when he removed some of the old --

7 DR. ROGERS: Okay.

8 MS. McLELLAN: -- restorations.

9 DR. JOHNSON: Well, pa- -- that one on Page 11  
10 really is his treatment plan, isn't it, or --

11 DR. ROGERS: No. I think (simultaneous,  
12 unintelligible) --

13 DR. JOHNSON: Or -- oh, diagnosis. Okay.

14 DR. ROGERS: Yeah. I think that was adequate.

15 DR. JOHNSON: Okay. Uh, "Inadequate Treatment  
16 Planning."

17 So then a (simultaneous, unintelligible)  
18 Treatment Planning" --

19 DR. ROGERS: Page 27 through, um, 32? Or is the  
20 big (unintelligible words) letter (unintelligible) on  
21 the "Treatment Plan"?

22 DR. JOHNSON: And then also Page 20 and --

23 MR. BROWN: 36, I guess, the "Treatment Plan" would  
24 be.

25 DR. ROGERS: (Unintelligible). Let's see.



1 DR. JOHNSON: 36? Says 36 on the bottom.

2 MR. BROWN: Yeah. 27 on the doctor's

3 (unintelligible).

4 DR. JOHNSON: Yeah. That's right (unintelligible).

5 And I don't think that's the only one. I think it

6 actually is --

7 DR. ROGERS: But, you know (simultaneous,

8 unintelligible) --

9 DR. JOHNSON: Well (simultaneous,

10 unintelligible) --

11 DR. ROGERS: That's just facing it. That's just

12 telling us --

13 DR. JOHNSON: -- facing it down --

14 DR. ROGERS: -- how he's going to do the treatment

15 plan (unintelligible) --

16 DR. JOHNSON: Okay.

17 DR. ROGERS: The actual "Treatment Plan" -- it's

18 all in here, I thought, when I looked through that.

19 DR. JOHNSON: Well, I put down as, uh, H, uh, uh,

20 33 to 37 (simultaneous, unintelligible) --

21 DR. ROGERS: Right, and then he actually later

22 on --

23 DR. JOHNSON: It phases into -- he's treatment

24 planning it.

25 DR. ROGERS: Later on in the chart, when he has

1 problems, he also has other "Treatment Plans," no? I  
2 mean didn't -- I don't know where we put that,  
3 but -- where that would be, but --

4 DR. JOHNSON: "Treatment Plans" are noted during  
5 the, uh -- throughout the record.

6 DR. ROGERS: Right --

7 DR. JOHNSON: (Simultaneous, unintelligible) --

8 DR. ROGERS: -- when problems arose. When  
9 it's -- talks about this (unintelligible) appliance in  
10 here (unintelligible) there's additional  
11 (unintelligible) on Pages -- the record goes from what  
12 page to what page? The actual -- it goes from  
13 Page -- what is this page? 43 to Page -- it's a long  
14 record.

15 DR. JOHNSON: Yeah. I wrote down, uh, "Treatment  
16 Plan re-evaluated as treatment progressed."

17 DR. ROGERS: Right, and then the -- but the "Chart  
18 Notes" are from Page -- man -- wrote a whole  
19 (unintelligible) in here.

20 I believe it's from Page 41 to Page sixty-  
21 -- what is that number? -- 63.

22 DR. JOHNSON: 63. Okay.

23 DR. ROGERS: That's more than 50 hours.

24 MR. BROWN: Yeah.

25 DR. JOHNSON: "Failure to Diagnose" is the

1 first -- Number 5, um, (unintelligible) --

2 DR. ROGERS: I don't see any evidence that he  
3 failed to diagnose.

4 DR. JOHNSON: Okay. So we gotta come up with, um,  
5 "Diagnosis was made by patient's chief complaint of  
6 pain." Uh --

7 DR. ROGERS: He made a diagnosis in the beginning  
8 with all sorts of --

9 DR. JOHNSON: I'm looking at what I have to write  
10 down.

11 DR. ROGERS: His diagnosis was, um -- you've told  
12 it to us. What did you call it? "Myofascial Pain" --

13 MR. BROWN: "Myofascial pain dysfunction syndrome."

14 DR. ROGERS: -- (unintelligible) syndrome.

15 He wasn't unable to (unintelligible).

16 DR. JOHNSON: Well, we could (unintelligible) term  
17 "myofascial."

18 MR. BROWN: "Myofascial pain" --

19 DR. JOHNSON: "Pain syndrome."

20 MR. BROWN: Dysfunction --

21 DR. ROGERS: Dysfunction --

22 MR. BROWN: Dysfunction.

23 DR. JOHNSON: (Unintelligible) dysfunction  
24 syndrome, as evident by tests done.

25 Okay. You (unintelligible) before that?

1 DR. ROGERS: Next.

2 DR. JOHNSON: "Inadequate (unintelligible)  
3 Treatment."

4 DR. ROGERS: Well, I mean, the result may not have  
5 been to the patient's liking, but it isn't like the guy  
6 is ignoring his TMJ. He started off treating his TMJ  
7 and treated it the whole time. The patient left, so  
8 the -- I don't know, you know, we have no evidence  
9 to --

10 MR. BROWN: (Simultaneous, unintelligible)  
11 compliance with recommended treatment plan. Doctor's  
12 testified --

13 DR. ROGERS: You know, it's -- healthcare -- you  
14 can't guarantee a result, necessarily.

15 MR. BROWN: Plus what I'm speaking to is when the  
16 doctor gave him a course of treatment --

17 DR. ROGERS: Didn't follow the doctor's  
18 recommendations, left town --

19 MR. BROWN: (Simultaneous, unintelligible).  
20 Exactly.

21 DR. ROGERS: Um, I don't need any evidence --

22 DR. JOHNSON: Now, the TMJ treatment was done  
23 in -- within standards of care --

24 DR. ROGERS: Right. And he -- he consulted  
25 with -- with other colleagues when necessary, listening

1 to the (unintelligible) third party of second  
2 opinion --

3 MR. BROWN: Well, I think I counted at least four  
4 referrals --

5 DR. ROGERS: Well, one of them is (unintelligible)  
6 suffer from in the patient, but still it wasn't like  
7 when the patient went there the doctor ignored it. He  
8 was (unintelligible) and followed through on the  
9 recommendations. Didn't get positive results either;  
10 and so perhaps it's a case of either lack of compliance  
11 or just difficulty to a level that no one's gonna help  
12 the guy; other issues, perhaps, and (unintelligible).

13 MR. BROWN: (Simultaneous, unintelligible).

14 DR. ROGERS: It's certainly not evident that the  
15 ~~guy didn't do his darndest to try and help this person.~~  
16 This -- this kind of care doesn't happen in most  
17 offices, so --

18 MR. BROWN: That's what I would --

19 DR. ROGERS: The guy is not going to a slipshod  
20 person here.

21 MR. BROWN: Well, I -- I --

22 DR. ROGERS: Do you know what I'm saying?

23 MR. BROWN: -- counted at least a couple hundred  
24 treatment visits --

25 DR. ROGERS: Right.

1 MR. BROWN: -- and I stopped counting after the 60  
2 at no charge, you know, so as a person (unintelligible)  
3 public I didn't see anything that showed the treatment  
4 was being dragged out for the purpose of (simultaneous,  
5 unintelligible) --

6 DR. ROGERS: And as a patient you wouldn't be going  
7 (unintelligible) if there was somebody that is talking  
8 about (unintelligible) TMJ, just -- I mean what that  
9 question is saying, you know, either the guy is ignoring  
10 him about it -- obviously he's been well trained.  
11 Secondly, he, um -- or he didn't do anything about it  
12 and ignored it, which never happened.

13 MR. BROWN: Now, you would change his course of  
14 treatment (simultaneous, unintelligible) --

15 DR. ROGERS: So it's -- and what I would call a bad  
16 result, even as a result of patient noncompliance or  
17 just what other -- other healthcare reasons there may  
18 be, even not to do with teeth --

19 MR. BROWN: I would agree with that.

20 DR. ROGERS: Well -- I mean I know how  
21 patients -- you know, you spend that kind of money, you  
22 know, you would expect (simultaneous, unintelligible)  
23 results, obviously --

24 MR. BROWN: (Simultaneous, unintelligible)  
25 something --

1 DR. ROGERS: -- and that's understandable, that  
2 somebody gets upset --

3 DR. JOHNSON: Okay. What I wrote down --

4 DR. ROGERS: -- but it doesn't necessarily mean --

5 DR. JOHNSON: -- was, "TMJ treatment was done  
6 within standards of care, consulted other professionals,  
7 and referred to other professionals. Records show  
8 patient did not follow treatment recommendations, i.e.,  
9 was not compliant."

10 DR. ROGERS: I would say that's true.

11 MR. BROWN: I'd say the same.

12 DR. ROGERS: Okay. Is that the end?

13 DR. JOHNSON: Um...

14 DR. ROGERS: (Unintelligible) the last one --

15 MS. McLELLAN: That's it.

16 MR. BROWN: That's all the allegations.

17 DR. ROGERS: Okay. So now we need to go through  
18 and, uh, decide if we're gonna (simultaneous,  
19 unintelligible).

20 MR. BROWN: Okay. Back to Number --

21 DR. ROGERS: Number 1. I guess we're supposed to  
22 be closing.

23 DR. JOHNSON: Okay. "Inadequate History  
24 Clinical" -- I move to dismiss.

25 DR. ROGERS: Dismiss.

1 MR. BROWN: Dismiss.

2 DR. JOHNSON: Next one is "Inaccurate Radiographs."

3 DR. ROGERS: Dismiss.

4 DR. JOHNSON: I move to dismiss.

5 MR. BROWN: Dismiss.

6 DR. JOHNSON: The next one is, "Inadequate

7 Diagnosis."

8 DR. ROGERS: Dismiss.

9 DR. JOHNSON: Dismiss.

10 MR. BROWN: Dismiss.

11 DR. JOHNSON: Next one is "Inadequate Treatment

12 Planning."

13 DR. ROGERS: Dismiss.

14 DR. JOHNSON: Dismiss.

15 MR. BROWN: Dismiss.

16 DR. JOHNSON: Uh, "Failure to Diagnose."

17 DR. ROGERS: Dismiss.

18 MR. BROWN: Dismiss.

19 DR. JOHNSON: And, "Inadequate TMJ Treatment."

20 DR. ROGERS: Dismiss.

21 DR. JOHNSON: Dismiss.

22 DR. ROGERS: Okay.

23 DR. JOHNSON: No grounds for disciplinary...

24 DR. ROGERS: No grounds.

25 "After all discussion and recommendations are



1 formulated, read" -- oh, I'm sorry. I'm not supposed to  
2 read that line.

3 (Laughter of participants.)

4 DR. ROGERS: Okay. You'll be advised of the date  
5 of a Board of Dental Examiners Meeting, during which  
6 discussion of this Complaint will be held.

7 This proceeding is now concluded at 9:38 a.m.

8 MS. McLELLAN: Thank you very much.

9 DR. ROGERS: You're welcome.

10 DR. WAIS: Thank you.

11 DR. ROGERS: You can turn off the recording,  
12 please.

13 UNIDENTIFIED SPEAKER: Stop it or do I turn off --

14 (End of recorded proceedings.)

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1 STATE OF CALIFORNIA )

2 ) ss.

3 COUNTY OF LOS ANGELES )

4

5 I, LORENE F. SAMSON, CSR #1830, in and for the  
6 State of California, declare that I have transcribed a  
7 hearing before the Arizona State Board of Dental  
8 Examiners, Complaint No. 290116, Re: THOMAS D. WAIS,  
9 D.D.S., to the best of my ability:

10 I further certify that I was not present at  
11 the proceedings.

12 Executed this 18th day of February, 2010, at  
13 Los Angeles, California.

14

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Lorene F. Samson, CSR #1830

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For the State of California

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