

IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 Rajesh Baji, D.D.S.,)

4 Plaintiff,)Case No.

5 -vs-)1:98CV791

6 Northeast Regional Board of)

7 Dental Examiners, Inc.,)

8 Defendant.)

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10 Deposition of ELEANORE AWADALLA, D.D.S.,

11 a witness herein, called by the Plaintiff as

12 if upon cross-examination under the statute,

13 and taken before Luanne Stone, a Notary

14 Public within and for the State of Ohio,

15 pursuant to the agreement of counsel, and

16 pursuant to the further stipulations of

17 counsel herein contained, on Wednesday, the

18 14th day of July, 1999 at 1:00 P.M., at the

19 offices of Arter & Hadden, the Huntington

20 Building, the City of Cleveland, the County

21 of Cuyahoga and the State of Ohio.

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TACKLA & ASSOCIATES

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1 APPEARANCES:

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3 On behalf of the Plaintiff:

4 Frank Recker, Esq.

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7 On behalf of the Defendant:

8 Arter & Hadden, by:

9 Robert Hanna, Esq.

10

11 ALSO PRESENT:

12 William Dawson

13 Lili C. Kaczmarek, Esq.

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1 P R O C E E D I N G S
2 ELEANORE AWADALLA, D.D.S., being of
3 lawful age, having been first duly sworn
4 according to law, deposes and says as
5 follows:
6 CROSS-EXAMINATION OF
7 ELEANORE AWADALLA, D.D.S.
8 BY MR. RECKER:

9 Q Dr. Awadalla, state your full name for
10 the record.

11 A Eleanore Awadalla. Do you want me to
12 spell it?

13 Q Yes.

14 A E-L-E-A-N-O-R-E, A-W-A-D-A-L-L-A.

15 Q Dr. Awadalla, in the interest of full
16 disclosure, I want the record to reflect
17 that you and I are acquainted; are we not?

18 A Yes.

19 Q And you and I both spoke at the last
20 annual meeting of the American Association
21 of Dental Examiners in October of 1998 in
22 San Francisco.

23 A Correct.

24 Q And during our conversation in the hall
25 at that time, you advised me that you would

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2 behalf of NERB, correct?

3 A I don't recall that. I recall we
4 talked about your children. We were talking
5 to Dr. Weiss, but I don't recall that.

6 Q Let me see if I can help refresh your
7 recollection. Do you recall telling me that
8 you were involved in two matters in which I
9 was currently acting as counsel, one of
10 which you said was Dr. Gary Robinson? Do
11 you recall that?

12 A You were talking to me about that?
13 Uh-uh. I've never talked to you that long,
14 Frank.

15 Q You don't recall telling me that you
16 were involved as a witness for Dr. Gary
17 Robinson?

18 A No.

19 Q Do you recall that you were involved in
20 that case?

21 A I do now, yes, yes. I absolutely know
22 Dr. Robinson, and I know this case, but I --

23 Q But you don't recall telling me that
24 you were a witness for NERB?

25 A No. I remember us talking about family

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1 matters.

2 Q Okay. You wouldn't deny having said

3 it; you just don't recall saying it?

4 A I really don't recall.

5 Q In any event, it's true, is it not,

6 that I did not ask you any questions --

7 A Absolutely not.

8 Q -- about your being a potential witness

9 in this case?

10 A No.

11 MR. HANNA: Dr. Awadalla, let me

12 try to help the record along here. Let

13 Frank Recker ask his questions, and then

14 he'll let you answer the questions. We have

15 a problem when both of you talk at the same

16 time, okay? So --

17 THE WITNESS: Okay. She'll yell
18 at me.

19 MR. HANNA: She'll probably do
20 that. That's what the court reporter is
21 supposed to do.

22 MR. RECKER: Just for the
23 record, I want it to reflect that we have a
24 guest present here today, the executive
25 director of the Ohio State Dental Board

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1 who's also an attorney, and I am, of course,
2 consenting to her appearance even though she
3 has no right to be here, but I'm also
4 assuming that she will not participate in
5 counseling this witness or any such thing.

6 MS. KACZMAREK: That's correct.
7 Thank you, Frank.

8 MR. RECKER: How could I do
9 otherwise?

10 MR. HANNA: We also have a summer
11 associate here. He's not licensed, so the
12 record should reflect that for whoever is
13 observing the deposition.

14 BY MR. RECKER:

15 Q Doctor, in October of 1998 at the AADE
16 meeting, did you speak to anybody about
17 being a witness in this case?

18 A No.

19 Q When did you first speak to anyone
20 about being a witness in this case?

21 A Nick York. The exact date, I'm not
22 sure of.

23 Q The approximate month?

24 A It would have been in 1998, and I would
25 say it was towards the end of the year, and

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1 at that time it was a discussion about the

2 case, and no specific person was asked to be
3 a witness at that time.

4 Q Were you talking with him on the
5 telephone or in person?

6 A No, in person.

7 Q Where was this?

8 A At the board office.

9 Q The Ohio board office?

10 A Uh-huh.

11 Q And at that time you discussed with him
12 your potentially acting as a witness in this
13 case?

14 A He asked me questions, so he didn't say
15 I would be a witness or not. He just asked
16 questions.

17 Q Was it your understanding at that time
18 that you could be a witness in this case?

19 A I understand that at any time I talk to
20 a lawyer, that's possible, yes. I mean,
21 I'm trying to be honest, Frank. I don't
22 know.

23 Q What was the nature of the questions?

24 A Oh, I believe they were NERB-related

25 questions.

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1 Q Was this during a Dental Board meeting?

2 A No, outside of a Dental Board meeting.

3 Q Did you meet him in the board office?

4 A Yeah, in Lili's office.

5 Q So, you came to Columbus for the

6 express purpose of meeting with Mr. York?

7 A It was not during the board meeting. I

8 believe it was maybe after a board meeting

9 or before. I really can't recall the exact

10 hour or day, but I know I've spoken with

11 Nick York.

12 Q You spoke to him in the Dental Board

13 office in Columbus, Ohio?

14 A Uh-huh.

15 Q It was not during a regularly convened

16 meeting of the Dental Board?

17 A No, it was not.

18 Q Had you, prior to your appearance in
19 Columbus, made the arrangements to meet with
20 him at the board office?

21 A I knew he was coming, yes. I knew he
22 was coming to talk to me.

23 Q Okay.

24 A Yes.

25 Q Did you know the nature of the

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1 conversation that you were going to have
2 with him?

3 A Yes.

4 Q And what was that?

5 A It was regarding the Baji case.

6 Q Why would Mr. York be talking to you in
7 late 1998 about the Baji case?

8 MR. HANNA: Objection.

9 BY MR. RECKER:

10 Q You were not a board officer at the
11 time; were you?

12 MR. HANNA: Objection. Do you
13 want her to guess?

14 BY MR. RECKER:

15 Q Do you know why he wanted to talk to
16 you as opposed to the board president?

17 MR. HANNA: Objection.

18 THE WITNESS: I was the board
19 president.

20 BY MR. RECKER:

21 Q In October -- I'm sorry, in December of
22 1998?

23 A Yes. I just relinquished that job to
24 Don Demkee in May before my reappointment
25 because I didn't know if I would be back.

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1 My term had run out.

2 Q So, you were board president through

3 what month?

4 A March of 1999.

5 Q Okay. When did you next speak to Mr.

6 York about this case?

7 A Okay. At our May meeting.

8 Q And was it on the telephone or in

9 person?

10 A In person.

11 Q Mr. York was at the May meeting?

12 A Again, it was after the board meeting.

13 Q Okay, and what was your understanding

14 of the reason you were going to meet with

15 Mr. York?

16 A Questions.

17 Q Such as?

18 A About the case: tell me about the

19 examination; tell me how it's run. What do

20 you do in the exam? Just questions about

21 the exam.

22 Q You, personally?

23 A Yes, me, personally.

24 Q Was it clear in your mind that you were

25 going to be a witness in this case?

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1 A No. I thought Don Demkee was going to
2 be a witness.

3 Q Why did you believe that?

4 A Because he was board president, I just
5 assumed by then that whoever was president
6 was going to be the witness.

7 Q Do you know why Mr. York was asking you
8 questions about how the exam was run?

9 A Well --

10 MR. HANNA: Let him finish the
11 question.

12 THE WITNESS: He was asking --

13 MR. HANNA: Wait. His question
14 was: do you know why Mr. York was doing
15 something?

16 BY MR. RECKER:

17 Q Was asking you about how the exam was

18 run.

19 MR. HANNA: Let me object to that

20 question, but go ahead.

21 THE WITNESS: Can I answer?

22 MR. HANNA: I'm not quite sure

23 you can answer, but --

24 THE WITNESS: Maybe because I'm

25 very knowledgeable; I don't know. Maybe

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1 because I communicate well. I don't know.

2 I really don't.

3 BY MR. RECKER:

4 Q When did you agree to be a witness in

5 this case?

6 A Probably last month. It was just a

7 short while ago that he asked me.

8 Q July?

9 A No. It's July now.

10 Q I'm sorry.

11 A So, I'd say June.

12 Q June?

13 A Yes, May, June; I don't know, I mean --

14 Q Between 1998 when you met with Mr. York

15 and May of 1999, when you met with Mr. York

16 --

17 A Okay.

18 Q -- did you have any conversations with

19 Mr. York or Mr. Hanna?

20 A I've never met or spoken to Mr. Hanna

21 until today. Yes, I've spoken to Nick on

22 the phone.

23 Q Between your personal meeting in 1998

24 and your face-to-face meeting in May of 1999

25 --

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1 A I've had two face-to-face meetings, and

2 I've had lots of phone conversations, and he

3 did come to see me last week.

4 Q You say "lots of phone conversations."

5 A Like three is too many with a lawyer,

6 right.

7 Q He called you?

8 A Yes.

9 Q And what was the nature of the

10 conversations?

11 A To discuss, again, questions before he

12 asked me to be a witness, and, then, when he

13 asked me to come do this, just what it

14 means, and just general information.

15 Q Well, during those three conversations,

16 was he calling to talk to you about the

17 weather or about the NERB examination?

18 A The NERB. I said it was things that

19 have to do with this case. The weather is

20 not in this case.

21 Q So, why would you know more about the

22 NERB exam than the people at NERB?

23 MR. HANNA: Objection.

24 BY MR. RECKER:

25 Q Do you know why he was asking you about

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1 the exam as opposed to the principals at

2 NERB?

3 MR. HANNA: Objection. Why do

4 you keep asking what Nick's thinking is and

5 why Nick is doing things? How is she

6 supposed to know what Nick is thinking and

7 why he's doing things?

8 THE WITNESS: I guess he must

9 have asked a lot of people.

10 MR. HANNA: Well, don't guess.

11 THE WITNESS: Okay.

12 MR. HANNA: If you don't know why

13 he's doing something, tell him, but don't

14 guess. That does neither side any good.

15 THE WITNESS: I don't know.

16 MR. RECKER: Come on, coach.

17 MR. HANNA: This is different

18 than telling her what part of a document to

19 look at.

20 BY MR. RECKER:

21 Q How long were these telephone

22 conversations with Mr. York?

23 A It was during patient hours, so

24 probably ten minutes.

25 Q And your meeting with him in 1998, how

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1 long was that?

2 A I'd say an hour.

3 Q And your meeting in May of 1999?

4 A Two hours. It might have been April; I

5 don't know.

6 Q Your last meeting was this week?

7 A It was last Wednesday.

8 Q At your office?

9 A At my office.

10 Q How long was that?

11 A After patients; about two hours.

12 Q At any time did you learn that NERB was
13 seeking individuals to serve as experts on
14 its behalf in this case?

15 A No.

16 Q At any time did you learn that NERB was
17 having difficulty obtaining experts to serve
18 in this case on its behalf?

19 A No.

20 Q Did anyone tell you that several
21 individuals refused to become involved as an
22 expert in this case on behalf of NERB?

23 A I'm not even aware of that right now.

24 Q You are a member of the Ohio State
25 Dental Board, correct?

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1 A Yes.

2 Q In that capacity, you are a public
3 official of the state of Ohio?

4 A Yes.

5 Q And you're familiar with the
6 constitution and bylaws of NERB?

7 A Yes.

8 Q You are individually, personally a
9 member of NERB; is that correct?

10 A Yes.

11 Q Are you appearing here today in your
12 official capacity as a member of the Ohio
13 State Dental Board or as a member of the
14 Northeast Regional Board, the defendant?

15 MR. HANNA: Objection.

16 THE WITNESS: I'm appearing as a
17 member of NERB and as a licensed dentist who
18 has participated in NERB, and a current
19 board member, but I know I don't represent
20 the board; I represent my opinions only.

21 BY MR. RECKER:

22 Q Do you receive any kind of compensation
23 from NERB?

24 A Yes, I do, my travel expenses and
25 minimal compensation for food and lodging.

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1 Lodging is paid for, and the rest of the
2 compensation is for food.

3 Q Is that called a per diem?

4 A Uh-huh.

5 Q How much is that?

6 A Oh, I think it's \$150 per day. I
7 really -- NERB would have a more accurate
8 answer.

9 Q Do you receive a 1099 or a W-2 from
10 NERB?

11 A Yes.

12 MR. HANNA: You asked the
13 question.

14 BY MR. RECKER:

15 Q Do you receive a 1099 or a W-2?

16 A No, no, a 1099, just of the monies that
17 they give us for our expenses.

18 Q Have you had any discussions with
19 anyone about your potentially being

20 nominated as an officer in NERB?

21 A No.

22 Q Are you aware that, as a member of

23 NERB, you're eligible to serve as an officer

24 of NERB?

25 A Yes.

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1 Q Do you know how much compensation the
2 officers of NERB receive?

3 A I have no idea. It does not interest
4 me.

5 Q Do you know that they receive
6 compensation?

7 A I believe office staff receives
8 compensation. If you're asking me about
9 officers as in the chairman, I don't know.

10 Q Elected officers.

11 A I don't know.

12 Q Okay. Now, you are a voting member of

13 the general assembly of NERB individually;

14 are you not?

15 A Yes.

16 Q And NERB is a nonprofit corporation; is

17 it not?

18 A Yes.

19 Q Do you owe a fiduciary duty to the Ohio

20 State Dental Board?

21 A What does that mean?

22 MR. HANNA: If you don't know

23 what he's talking about --

24 THE WITNESS: I don't know what

25 you mean.

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1 BY MR. RECKER:

2 Q Do you know whether or not you owe a

3 fiduciary duty to the Northeast Regional

4 Board?

5 A Could you define "fiduciary duty"?

6 Q If you don't know the answer, that's

7 fine.

8 A Okay, I don't know.

9 Q The report you submitted, which we'll

10 get to, indicates that you're not being

11 compensated to serve as a witness in this

12 case.

13 A No.

14 Q Was that discussed with anyone, the

15 fact that you were not going to be

16 compensated?

17 A I didn't expect it, to be honest with

18 you.

19 Q Did anyone advise you not to receive

20 compensation for your involvement?

21 A I didn't ask the question, but Nick

22 York mentioned that that would be the case,

23 which it did not make any difference to me.

24 Q Could you potentially realize any

25 personal benefit or gain as a result of your

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1 testimony in this matter?

2 A No.

3 Q Does the Ohio Ethics Law require you to
4 disclose the income you receive from NERB in
5 your reports?

6 MR. HANNA: Objection, to the
7 extent that you're asking her to give a
8 legal opinion of some sort.

9 BY MR. RECKER:

10 Q I'll back up. You fill out Ohio Ethics
11 Reports every year?

12 A Right, right.

13 Q Is your income from NERB disclosed on
14 that report?

15 A It's not required.

16 Q Do you serve on any committees within
17 NERB?

18 A No.

19 Q Have you ever served on any committees?

20 A No.

21 Q Do you know which individuals are on
22 the current Nominating Committee of NERB?

23 A I think Don Demkee is a member of the
24 Nominating Committee.

25 Q And the Nominating Committee --

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1 A Or was. I don't know if he is now. I
2 can't remember.

3 Q Do you know if Frank Williams is or not?

4 A He might be. Maybe it's Frank
5 Williams; I don't know.

6 Q And the Nominating Committee is
7 responsible for nominating individuals to
8 serve on the Executive Committee; is that
9 correct?

10 A I believe on other committees too,
11 yeah. It sounds good.

12 Q Tell me what NERB is in your mind.

13 A It's the Northeast Regional Board of

14 Dental Examiners.

15 Q And what does it do?

16 A It examines students out of dental

17 schools to assess minimum competency.

18 Q Is NERB what is known as a test

19 developer?

20 A Yeah.

21 Q Is it also what is known as a test

22 administrator?

23 A Yes.

24 Q What is the Ohio State Dental Board's

25 relationship with NERB?

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1 A The Ohio State Dental Board hires NERB

2 to administer the exam that they feel is

3 necessary to license individuals in the

4 state of Ohio.

5 Q Now, you said that the board hires

6 NERB.

7 A Then perhaps "hire" is not the proper

8 term.

9 MR. HANNA: Yes.

10 BY MR. RECKER:

11 Q Tell me what you meant by the Ohio

12 State Dental Board hires NERB.

13 A We're charged with protecting the

14 public. Part of that charge is to determine

15 whether students graduating from dental

16 schools are minimally competent to practice

17 in the state of Ohio. The Ohio State Dental

18 Board uses the Northeast Regional Board as a

19 testing agency, recommends it.

20 Q So, is that what you meant when you

21 said "hires NERB"?

22 A Yes.

23 Q So, there really isn't any compensation

24 paid --

25 A Yes.

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1 Q -- to NERB from the Ohio State Dental
2 Board; is that correct?

3 A There is no compensation, right,
4 correct.

5 Q Is there any written agreement between
6 the Ohio State Dental Board and NERB
7 governing the relationship between the two?

8 A I don't believe so.

9 Q Is there any document, to your
10 knowledge, which specifies what the Ohio
11 State Dental Board expects from NERB?

12 A Is there a written document?

13 Q Correct.

14 A I don't believe there's a written
15 document.

16 Q Do you believe your status as a member
17 of the Ohio State Dental Board and a member
18 of NERB presents any potential conflicts of
19 interest?

20 A I think it's an additive effect and not

21 a mutually exclusive effect. It helps to be
22 a member, an active member of NERB. I can
23 watch what the exam's about and make sure
24 that the citizens of Ohio are protected.
25 Q Do you believe that your status as a

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1 member of the Ohio State Dental Board and a
2 voting member of NERB compromises your
3 ability to render an objective opinion in
4 this case?

5 A No.

6 Q Now, it's my understanding that for
7 some period of time, the Ohio State Dental
8 Board accepted all regional boards for
9 purposes of initial licensure in Ohio; is
10 that correct?

11 A That is correct.

12 Q And at some point in time, the Ohio

13 State Dental Board decided that it would
14 only accept the NERB exam for purposes of
15 initial licensure in Ohio; is that correct?

16 A Correct.

17 Q And, in fact, you voted for that motion
18 which led to NERB being the only regional
19 board accepted by the Ohio State Dental
20 Board for purposes of initial dental
21 licensure in Ohio; is that correct?

22 A That is correct.

23 Q Did anyone affiliated with NERB,
24 excluding you and the other members of the
25 Ohio State Dental Board because they're all

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1 members of NERB; did anyone else affiliated
2 with NERB influence your decision to accept
3 only NERB for purposes of initial licensure
4 in Ohio?

5 A No.

6 Q Now, you're aware that the reliability
7 and the validity of the NERB exam is at
8 issue in this case; are you not?

9 MR. HANNA: Objection.

10 THE WITNESS: I'm aware that
11 you're questioning the reliability and
12 validity of this exam; you are.

13 BY MR. RECKER:

14 Q Well, your report deals primarily with
15 the reliability and validity of the NERB
16 exam; does it not?

17 A My report? You mean my --

18 Q The statement you submitted in this
19 case.

20 A Yes. I understand that you have a
21 problem with the reliability and validity of
22 the exam.

23 Q All right, and since the Ohio State
24 Dental Board accepts only the NERB exam for
25 purposes of initial licensure --

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1 A Uh-huh.

2 Q -- you and the Ohio State Dental Board

3 have an interest in the outcome of this

4 case; do you not?

5 MR. HANNA: Objection.

6 THE WITNESS: I have an interest

7 in many things. Yeah, I have an interest.

8 BY MR. RECKER:

9 Q Well, isn't it true that, if a court

10 decided that the NERB exam was invalid and

11 unreliable, the Ohio State Dental Board

12 could no longer accept that exam for

13 purposes of licensure in Ohio?

14 MR. HANNA: Objection.

15 THE WITNESS: I'm not sure -- can

16 I answer? I'm not sure that's true. I was

17 under the impression that we have

18 jurisdiction to choose and select the best

19 means possible for us to protect the

20 citizens, and I was under the impression

21 that, if we felt this exam was the proper

22 one, that we had the right to choose it.

23 BY MR. RECKER:

24 Q So, is it your belief that, even if a

25 court decides the exam is invalid and

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1 unreliable, you, the Ohio State Dental

2 Board, could still choose to accept that

3 exam for purposes of licensure in Ohio?

4 MR. HANNA: Objection.

5 BY MR. RECKER:

6 Q Is that your understanding?

7 A I'm only one of seven people, so I

8 can't tell you what the other six would do.

9 Q I didn't ask for the other six. I

10 asked for your understanding.

11 A Yes, yes.

12 Q And is it not true that, if the Ohio

13 State Dental Board no longer accepted the
14 NERB exam for purposes of licensure in Ohio,
15 the members of the board would no longer be
16 eligible to be members of NERB?

17 A If we did not accept NERB as our
18 examining body, we would have no reason to
19 want to be on any examining body that didn't
20 do anything for our people. So, it would be
21 kind of silly for us to want to be members.

22 Q So, the answer to my question is what?

23 A It's no, I don't want to be a member of
24 an organization that doesn't serve or help
25 my people, my students.

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1 Q According to the NERB constitution and
2 bylaws, you would not be eligible to be a
3 member of NERB if you did not accept that
4 examination; isn't that correct?

5 MR. HANNA: Objection.

6 THE WITNESS: No, you can be.

7 You can be a consultant member.

8 BY MR. RECKER:

9 Q Is that different than your status?

10 A Yes, it's different.

11 Q How is that different?

12 A I believe consultant members

13 contribute, but they're not voting members

14 yet.

15 Q Would you agree that the outcome of

16 this case could potentially affect the

17 credibility of the Ohio State Dental Board

18 as a body?

19 MR. HANNA: Objection.

20 THE WITNESS: No.

21 BY MR. RECKER:

22 Q You don't think it could?

23 A No.

24 Q Why?

25 A Because I think, in my mind, I think

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1 there are lots of reasons why I would choose
2 this exam to protect the citizens of Ohio,
3 and --

4 Q My question is: if a court determined
5 that this exam is invalid and unreliable,
6 don't you feel that that would affect the
7 credibility of the Ohio State Dental Board?

8 MR. HANNA: Objection.

9 THE WITNESS: I would expect to
10 appeal it, because I don't even know how
11 you'd come up with that.

12 BY MR. RECKER:

13 Q That's not my question, Doctor.

14 A I -- I know this exam well, and I truly
15 believe in it, and I don't know -- it
16 wouldn't affect me personally.

17 Q I didn't ask you that.

18 A But I can't speak for the board, so
19 you've got me stuck.

20 MR. HANNA: Hold on here, and

21 let's wait for a question.

22 THE WITNESS: Okay.

23 MR. HANNA: If you don't

24 understand his question, fine. I think you

25 answered his question.

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1 THE WITNESS: I thought so.

2 MR. HANNA: I'm not sure if he

3 liked your answer, but if he didn't, fine.

4 BY MR. RECKER:

5 Q My question is, if a court of law

6 determined that the NERB exam was invalid

7 and unreliable, in your personal opinion,

8 wouldn't that affect the credibility of the

9 Ohio State Dental Board?

10 MR. HANNA: I'm going to object

11 to the question.

12 THE WITNESS: I'm going to answer

13 no.

14 BY MR. RECKER:

15 Q All right.

16 A You asked for my opinion, and that's my

17 opinion.

18 Q If a court of law determined that the

19 only exam you accept for purposes of initial

20 licensure in Ohio is invalid and unreliable,

21 do you believe that that could subject you

22 to personal liability?

23 MR. HANNA: Objection.

24 THE WITNESS: I would just get a

25 great lawyer and ask him that question. I

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1 have no idea.

2 BY MR. RECKER:

3 Q You've never discussed that with the

4 other Board members?

5 A No.

6 Q Have you discussed your appearance as a
7 witness on behalf of NERB with the board's
8 legal counsel?

9 A Would that be Mary?

10 MR. HANNA: Hold on here. You
11 can answer that yes or no.

12 THE WITNESS: No. If Mary is our
13 legal counsel, no.

14 BY MR. RECKER:

15 Q Did you at any time tell Nick York
16 that, in your opinion, he would be better
17 off having someone else other than a member
18 of NERB make the statements that you made in
19 your report?

20 A No.

21 Q Did anyone encourage you, excluding Mr.
22 York; did anyone encourage you to
23 participate in this case as a witness on
24 behalf of NERB?

25 A No.

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1 Q So, Dr. Demkee didn't encourage you to
2 do this?

3 A I think he was dying to do it. It was
4 a competition.

5 Q You wanted it? You wanted to do this?

6 A I don't mind doing it at all, no. I
7 like testifying in anything I believe in.

8 Q When did you first learn that Dr. Baji
9 filed a lawsuit against NERB?

10 A Oh, when did he file the lawsuit? It's
11 not like a World Cup. I don't know. I just
12 remember hearing about it.

13 Q Okay.

14 A It wasn't significant enough for me to
15 remember the exact date. Sorry, Frank.

16 Q To your recollection, was it ever
17 discussed during a public board meeting?

18 A You have the minutes, but I -- it might
19 have been. You have the minutes. I mean,
20 we can look at the minutes, but I don't

21 recall.

22 Q That's all I asked, to your

23 recollection.

24 A No, I don't recall.

25 Q Did the Ohio State Dental Board as a

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1 board authorize your involvement in this

2 case?

3 A No.

4 Q Did any member or members of the Dental

5 Board review the report you submitted in

6 this case prior to your submitting it?

7 A The pages, the three pages of what I

8 read, is that what you mean by the "report"?

9 Nobody's looked at that from the board.

10 (At this time Plaintiff's Exhibit

11 1 was marked for identification purposes.)

12 BY MR. RECKER:

13 Q Handing you what will be marked as
14 Awadalla 1, that is the subpoena that you
15 were served with for this appearance today,
16 correct?

17 A Yes.

18 Q All right, and it indicates that you're
19 to bring certain documents with you, and
20 under number one it says, "All documents,
21 reports, findings, notes and correspondence
22 which relate to or reference the Ohio State
23 Dental Board's review and analysis of the
24 defendant's dental examinations in 1995,
25 1996 and 1997."

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1 What did you bring in response to
2 that request?

3 A Nothing.

4 Q Why was that?

5 A I threw them all out. We don't -- we

6 receive a lot of information, a lot of
7 documentation every year, and at the end of
8 the year, I throw them out, usually.

9 Q Item number two, "All documents, notes
10 and correspondence which relate to or
11 reference --" it should be "-- your
12 involvement in this matter."

13 A Here.

14 Q That's what you have with you today?

15 A Uh-huh.

16 Q All right. Would you just go through
17 those and cull out what each item is that
18 you produced in response to item number 2?

19 A The report on the NERB examination
20 regarding Baji versus Northeast Regional
21 Board of Dental Examiners. What is that?
22 It's just --

23 Q That's called a cover letter from Arter
24 & Hadden.

25 A Yes, a cover letter from Arter &

TACKLA & ASSOCIATES

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1 Hadden.

2 Q Is that to you?

3 A Yes, from Nick York, dated July 12th,
4 1999.

5 Q Okay.

6 A The United States District Court of the
7 Northern District of Ohio, Eastern Division,
8 Rajesh Baji, plaintiff versus Northeast
9 Regional Board of Dental Examiners, whatever
10 that is.

11 Q Okay.

12 A Okay? "Guidelines for Valid and
13 Reliable Dental Licensure Clinical
14 Examinations, May of 1992," what is that?
15 What do I call it?

16 Q It looks like the deposition of Dr.
17 Rossa.

18 A Yeah. Those are my notes.

19 Q Would you just read the notes you wrote
20 on the back of Dr. Rossa's deposition?

21 A "Credentials Committee, minimal
22 competency, process standardize examiners."
23 I can't read this. "Appeals, Steering
24 Committee, credentials, grievance, content
25 reflects current dental practice."

TACKLA & ASSOCIATES

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1 These are notes from his
2 testimony.
3 Q From Dr. Rossa's testimony?
4 A Yeah.
5 Q Okay. The next document?
6 A That is United States District Court,
7 Northern District of Ohio, Eastern Division,
8 Rajesh Baji, plaintiff, versus Northeast
9 Regional Board of Dental Examiners,
10 Plaintiff's Motion for Partial Summary
11 Judgment.
12 Q All right.

- 13 A It's thick.
- 14 Q Is that your writing on the top of this?
- 15 A Yes.
- 16 Q And the next document?
- 17 A Baji versus Northeast Regional Board of
18 Dental Examiners, Inc. U.S. DC, Ohio Judge
19 Nugent, Supplement to Opinion of Frank J.
20 Courts, D.D.S., Ph.D.
- 21 Q And that's dated April --
- 22 A April, I think, 7th.
- 23 Q April 7th, 1999.
- 24 A Yes.
- 25 Q The next document is what?

TACKLA & ASSOCIATES

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- 1 A It looks like somebody's --
- 2 Q The report of Dr. Courts?
- 3 A I don't know. Where does it say
4 "Courts"? Yeah, report of Dr. Courts.
- 5 Q And the next is what?

6 A Report on NERB Test Validation and Lost

7 Income of Dr. Rajesh Baji, D.D.S.

8 Q By Dr. Martin Shapiro?

9 A Yes.

10 Q Dated?

11 A January 14, 1999.

12 This is just a manual, the oldest

13 manual I could find of the Northeast

14 Regional Board of Dental Examiners, Manual

15 and Examination in Dentistry.

16 Q Spring of 1998?

17 A Spring, yeah.

18 Q The next?

19 A Combined Regional Examination in

20 Dentistry, Dental Candidate Manual. I don't

21 know what the date is.

22 Q And the last one?

23 A Northeast Regional Board of Dental

24 Examiners, Dental Candidate Manual, spring

25 of 1996, and a subpoena which I didn't go

TACKLA & ASSOCIATES

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1 through.

2 Q That's okay. That's what we're talking

3 about.

4 A Okay.

5 Q So, the documents you just reviewed for

6 the record that you itemized were brought in

7 response to item number two on the subpoena,

8 correct?

9 A Uh-huh.

10 Q How about item number three?

11 A Is that part of two? I didn't know the

12 difference.

13 Q I'm asking you: did you bring anything

14 --

15 A That's all I have.

16 Q So, everything you've just delineated

17 is all you have.

18 A Yes.

19 Q Can you tell me when you received these

20 documents? Was it all at one time or over a

21 period of time?

22 A Over a period of time.

23 Q Spanning from when to when? I know

24 there's a letter from July of '99 from Nick

25 York.

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1 A Yeah. Probably, well, gosh, you can

2 probably look at all of the dates. It seems

3 like in the last couple of months, maybe. I

4 was out of town for a while in June. So, I

5 think before June, a little bit before, and

6 then after and most recently July 12th.

7 Q When did you graduate from dental

8 school?

9 A '79.

10 Q What school?

11 A Ohio State.

12 Q And have you had any formal

13 postgraduate training?

14 A Case Western Reserve, I did an

15 anesthesia residency the year after I

16 graduated.

17 Q And did you receive a certificate?

18 A Yeah.

19 Q Was it a one-year residency?

20 A It was a one-year, but I continued

21 part-time for two more years, and it was in

22 general anesthesia.

23 Q Do you use that training in your

24 practice?

25 A No.

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1 Q Do you have an anesthesia permit?

2 A No.

3 Q Okay. When did you start, go into

4 private practice?

5 A Part-time along with finishing the

6 second year of anesthesia in '81, I believe.

7 Q Was that --

8 A '81.

9 Q -- on your own or as an employee?

10 A As an employee.

11 Q Where were you employed?

12 A American Dental Centers.

13 Q How long?

14 A A few months.

15 Q And when did you start your own

16 practice?

17 A The practice I purchased when I moved

18 to Toledo in 1985.

19 Q Between '81 and '85, were you working

20 part-time for various --

21 A I worked in Cincinnati for a private

22 practitioner by the name of Green; actually,

23 in Hamilton which is outside of Cincinnati,

24 so --

25 Q And in 1985 was when you began your

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1 current private practice?

2 A Yes.

3 Q And what dental licensure exam did you
4 take?

5 A NERB.

6 Q In what year?

7 A Well, '79 when I graduated.

8 Q Did you pass all parts the first time?

9 A Amazingly, yes.

10 Q And you passed the National Board Part
11 I and Part II the first time?

12 A No, I had to take a part of one of them

13 twice. I was very ill, and I retook one

14 part, and I can't remember what it was,

15 Frank, to be honest with you, but I can look

16 it up.

17 Q Was it Part I or Part II?

18 A I don't remember.

19 Q Part II you take after your junior

20 year.

21 A All I recall is that it was traumatic.

22 Q Part II you take after your junior

23 year.

24 A I know. I can't -- I think I was -- I

25 can't remember, but I can look that up.

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1 Q Okay. It didn't hold up your

2 graduation from dental school?

3 A No, so it must have been Part I, yeah.

4 I graduated with the rest of the class.

5 Q And the professional organizations you

6 belong to? I know they're in your CV.

7 A Yes.

8 Q Organized dentistry?

9 A ADA, AADE, whatever, ODA.

10 Q You were appointed to the board in

11 April of 1994, correct?

12 A Yes.

13 Q When did you first attend a NERB
14 meeting?

15 A My appointment was in April, so I
16 believe it was another year. It was '95,
17 yeah.

18 Q And when did you first serve as an
19 examiner for NERB?

20 A After my initial training that year,
21 the year I was -- after the general
22 assembly. You must attend the general
23 assembly to serve as an examiner.

24 Q Did you act as a dental examiner in the
25 spring of '95 dental exams?

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1 A Yes.

2 Q Where, at what site?

3 A I believe it was the University of
4 Illinois was one site.

5 Q I'm just talking about dental, not

6 hygiene.

7 A Yes. I didn't do hygiene. I think it

8 was Illinois. I'm trying to remember.

9 Q And do you recall what section you

10 examined in?

11 A Perio.

12 Q For the entire spring series, did you

13 do perio?

14 A Yeah, yes.

15 Q When did you next examine for NERB?

16 A Gosh, I can't recall if I had to do a

17 summer. Generally I always do the spring,

18 and then I do either one summer or December

19 exam. I really can't recall. It might have

20 just been the spring exam.

21 Q The spring of '95 exam?

22 A Uh-huh.

23 Q The next time you examined then would

24 have been the spring of '96?

25 A Uh-huh.

1 Q Do you remember where that was?

2 A Boston, BU.

3 Q Again, were you perio or something

4 else?

5 A I was manikin.

6 Q Manikin examiner.

7 A I'm going to have to check. You know,

8 that's like too many years ago, so -- those

9 are all of the exams I've been in, so --

10 Q Now, in 1995, it was called CORE,

11 correct?

12 A Uh-huh.

13 Q So, the grading criteria was C, O, R, E

14 as opposed to one, two, three, four.

15 A Yeah.

16 Q Do you know what I'm talking about?

17 A Yeah, yeah.

18 Q In '95 or '96, to the best of your

19 recollection, did you ever examine

20 restorative?

21 A I don't recall.

22 Q Have you since?

23 A Oh, yes.

24 Q Approximately how many times have you

25 acted as an examiner for clinical dental

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1 examinations?

2 A Well, it's been around twice a year.

3 The spring exam is usually a week long which

4 is a two-part, two classes, or in a large

5 school, it would be the same class, so I'd

6 say it's every year, twice a year, so maybe

7 ten times.

8 Q And the examination assignments, do

9 they rotate from perio to restorative to

10 manikin?

11 A I've done every facet of the exam.

12 Q Okay. Are you familiar with the

13 grading criteria; by that I mean, what a C

14 means, an O means, an R means, an E means

15 or, using different terminology, what a one,

16 two, three or four means?

17 A Yes.

18 Q Do you know for each assessment you've

19 given, and by that I mean a one, a two, a

20 three or a four, for each assessment you've

21 given on everything you've assessed, do you

22 know how many ones you've given, how many

23 twos you've given, how many threes you've

24 given?

25 A No.

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1 Q Do you know what's meant by

2 "post-examination analysis profiling of

3 examiners"?

4 A The grades that each examiner gave, a

5 summation of all of them, is my

6 understanding.

7 Q Essentially, that's correct. All of
8 the examiners, all of the grades given by
9 all of the examiners for all procedures
10 they've graded, are you familiar that that's
11 called a post-examination analysis profiling
12 of examiners?

13 A Yes, yes.

14 Q Have you ever seen anything like that
15 from NERB?

16 A I have not.

17 Q Would you be surprised to learn that
18 certain examiners only give ones and twos?

19 A Yes.

20 Q Would you be surprised to learn that
21 certain examiners only give threes and fours?

22 A I've never seen it happen, but I assume
23 it's possible.

24 Q You don't know one way or the other?

25 A No.

TACKLA & ASSOCIATES

1 Q You're familiar with the amalgam

2 preparations criteria?

3 A Uh-huh.

4 Q Do you know how many individual items

5 there are to be evaluated by the examiners?

6 A You mean what areas of the preparation

7 or --

8 Q How many individual items total under

9 external form, internal form, treatment

10 management.

11 A It's changed quite a bit over the

12 years.

13 Q Has it?

14 A Yes.

15 Q How?

16 A There are less categories now than

17 there were when I first started with the

18 exam.

19 Q Do you know how many there were in 1995

20 and 1996?

21 A Probably, let's see.

22 Q Don't guess. Accept my representation

23 that there's 31 total.

24 A Oh, yeah, probably.

25 Q And you have actually served as an

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1 examiner grading, assessing every one of

2 those 31?

3 A Yes.

4 Q Based upon your knowledge and

5 experience and having acted as a NERB

6 examiner in the restorative section, to your

7 knowledge, is it possible for a candidate to

8 fail the amalgam preparation procedure when

9 the worst assessment given by one of the two

10 examiners was one R out of 31 procedures?

11 A Is it possible to fail with one R? Is

12 that what you're asking me?

13 Q With one examiner, one of the two

14 giving as the worst grade only one R out of

15 the 31 procedures.
16 A Is it possible? I don't know the exact
17 numbers that correspond with each R or each
18 E. In other words, if you give somebody an
19 R, I don't know what number that is. I
20 don't want to know that. It might prejudice
21 my thinking. So, I don't know.
22 Q Don't you have to know that?
23 A No, I do not. I'm there to assess what
24 I see. I don't sit there and add up the
25 points at the end of the day. That's not my

TACKLA & ASSOCIATES

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1 job.
2 Q Doesn't the examiner handbook require
3 that, if one examiner gives an O on a
4 certain item and another gives an R or an E,
5 they have to --
6 A Agree, someone has to. That's not what
7 you asked me. You asked me: do I know what

8 the points mean in the end? I don't know

9 what the points mean in the end.

10 Q Okay.

11 A I do know that when two people

12 disagree, in all fairness to the candidate,

13 they have to come to an agreement, and they

14 do that by reviewing the criteria.

15 Q If on a certain criteria --

16 A Uh-huh.

17 Q -- any one of the 31 items to be

18 assessed --

19 A Uh-huh.

20 Q -- if one examiner gives the highest, a

21 one or a C, and the other examiner gives the

22 worst, a four or an E, in your mind does

23 that reflect a problem with the examiner

24 standardization?

25 A It reflects not a problem but a

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1 correctable disparity between the two
2 people. I expect that to happen with human
3 beings. I prepare for that.

4 Q And how is it fixed in your mind? If
5 you give a one and somebody gives a four,
6 how is that fixed?

7 A Then, the two people would have to look
8 in that book where every, little criteria is
9 written in black and white and say: I gave
10 that person a four because look at this.
11 This, you know, roughness and depth
12 translates to a four.

13 Q Who is he talking to?

14 A The other examiner or the validator;
15 usually the validator. He's the captain.

16 Q So, the independent gradings go out the
17 door as soon as validation must occur.

18 MR. HANNA: Objection.

19 THE WITNESS: Independence exists
20 as you put those numbers down, and you walk
21 away. That to me is the true meaning of
22 independence.

23 BY MR. RECKER:

24 Q Okay.

25 A You came up with that decision on your

TACKLA & ASSOCIATES

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1 own. Now --

2 Q So, if someone independently gave a one

3 --

4 MR. HANNA: Let her finish her

5 statement.

6 BY MR. RECKER:

7 Q Go ahead.

8 A So, if I decided it's a one, whether I

9 did it quickly and didn't really think about

10 the guidelines, which we're all human, and

11 I'm sure that's happened; whether I wasn't

12 familiar with them, whether I should have

13 been remediated at that point, if I put a

14 one down and I walk away, and if the second

15 person sees something that perhaps I didn't

16 see and puts a four, the key to the whole
17 thing is that the validator then decides:
18 okay, who saw the right thing? Who got
19 closer to the mark? Which is correct? And
20 then -- or the two examiners say: here is
21 why it's a four, or here is why it's a one,
22 so that the person that put the one down
23 says: oh, you know, okay. So, yes, they
24 were independently making up their own
25 minds, but the final decision was done in

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1 all fairness to the candidate.
2 Q Is the purpose of the calibration
3 exercise, is the objective of that, the
4 ideal objective to have two examiners mark
5 the same thing when they're looking at the
6 same item to be evaluated?
7 A In the human brain, I don't think even

8 you can prove that. That is not possible,
9 and that's why reliability is not perfect.
10 What we try to do is say: here's a window.
11 You've got to jump out the window to die.
12 You can jump out to the left side; you can
13 jump to the right, but you've got to be in
14 the window, and what calibration is all
15 about is to get us all to see where the hole
16 in the window is. This is how I see it.
17 Q Now, say, after the calibration, you
18 see the hole as a one, and somebody else
19 sees it as a four.
20 A We recalibrate. We keep going. I'm
21 saying that we see the hole where it is. If
22 I say: there's a window right there, Frank,
23 and you say: no, it's there, that's what
24 calibration is. We're all seeing the hole,
25 and we're seeing anything within that hole

TACKLA & ASSOCIATES

1 as acceptable.

2 Q All right.

3 A Okay? That's what calibration is.

4 Q Calibration occurs before the actual
5 clinical grading procedures?

6 A As it should. It's a training period.

7 Q And in spite of that calibration, you
8 acknowledge that there are many situations
9 where one examiner will give a one, and
10 somebody else will give a three or a four?

11 MR. HANNA: Objection.

12 THE WITNESS: I acknowledge it
13 happens occasionally, but not many times.

14 BY MR. RECKER:

15 Q Did you review Dr. Baji's clinical
16 grading sheets in this case?

17 A I reviewed one.

18 Q Which one was that?

19 A I don't know.

20 Q Why wouldn't you have reviewed all of
21 them?

22 A Why didn't I review all of them? It's
23 not necessary. I mean, ask me anything you

24 want.

25 Q Okay. So, you wouldn't want to know if

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1 there were any grading disparities or
2 problems in any of the grading sheets that
3 led to this lawsuit or are involved in this
4 lawsuit before you rendered an opinion?

5 A I think I can look at a grade sheet and
6 tell you what happened, if that's what
7 you're asking me.

8 Q You didn't look at these grade sheets?

9 A I saw one grade sheet.

10 Q Getting back to my original question:
11 your answer was, I believe, that you don't
12 know. If one examiner gives only one R out
13 of 31 procedures on an amalgam prep, if
14 that's the worst grade the one examiner gave
15 --

16 A Uh-huh.

17 Q -- did you know that the candidate can

18 still fail?

19 A It's possible, but I don't know that

20 for a fact. I suppose it depends on where

21 the R was, what part of that scheme.

22 Q So, if you, yourself, walked away from

23 a candidate, and in the summary marks grid,

24 you had only placed one R, and are you with

25 me so far?

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1 A If I was examiner number one, and I

2 placed one R --

3 Q One R, and if one R was the worst, if

4 you walked away and never looked back, would

5 you expect that that R failed that

6 candidate, or don't you know?

7 A I don't know.

8 Q Let me hand you what we'll mark as

9 Awadalla 2.

10 MR. HANNA: Any time you want to
11 take a break.

12 (At this time a short recess was
13 had.)

14 BY MR. RECKER:

15 Q Mr. Hanna didn't give you any
16 instructions; did he?

17 A No.

18 (At this time Plaintiff's Exhibit
19 4 was marked for identification purposes.)

20 THE WITNESS: This is Exhibit 4.
21 Did we have three other ones already?

22 BY MR. RECKER:

23 Q Don't worry about that. Doctor,
24 handing you what's been marked Awadalla
25 Exhibit 4, let me ask you if you've ever

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1 seen that before.

2 A Yes.

3 Q Is this the one you reviewed?

4 A I think this is the one. That's the

5 only one I've seen, yes. I think this is

6 it.

7 Q Why did you review this one?

8 A I don't know; probably to recall what

9 CORE was. It's been many years since we've

10 done these 31 categories. There are 31,

11 right? I trust you.

12 Q Yes. You say you reviewed this.

13 You're talking about this specific exhibit

14 with candidate number 42 on it as opposed to

15 a blank form?

16 A I reviewed one with things on it. I

17 don't remember candidate number 42.

18 Q Okay.

19 A It looked like this, but I don't know

20 if this is it or not.

21 Q No problem. You're familiar with

22 grading, and you're familiar with how it's

23 supposed to be graded. You're familiar with

24 how the marks are supposed to be recorded,

25 et cetera, et cetera?

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1 A Yes.

2 Q If you would, look at the first

3 examiner's, number one's scoring, and

4 correct me if I'm wrong, but the only marks

5 examiner number one made were three Os, two

6 under "external form," one under "internal

7 form."

8 MR. HANNA: I'm sorry. Which

9 examiner are you talking about?

10 MR. RECKER: Examiner one.

11 BY MR. RECKER:

12 Q Are you with me so far?

13 A Yes.

14 Q We have three Os, and examiner number 1

15 gave an R under the last item, "base/liner

16 request."

17 A Okay.

18 Q And accept my representation that this

19 candidate failed this amalgam preparation.

20 Tell me how that works as far as what's

21 supposed to happen. Look at number one

22 where it says "over extension." Examiner

23 number 1 deemed that the highest, the best,

24 correct?

25 A Uh-huh.

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1 Q And examiner two gave that an R,

2 correct?

3 A Uh-huh.

4 Q And that needs to be validated, correct?

5 A Correct.

6 Q And in the validation grid, we see an

7 R, correct?

8 A Uh-huh.

9 Q Tell me where you find evidence of
10 validation of that item.

11 A In the validated column. This last
12 column is the V column. That is where the
13 agreement, disagreement between one or the
14 other exists, right here.

15 Q So, the second examiner's score carried
16 the day, correct?

17 A Yes.

18 Q Now, how would that occur? The second
19 examiner would have to call the first
20 examiner back?

21 A And go over the criteria and say: did
22 you notice the blah, blah, blah was over
23 three millimeters, and you'd say, oh, yeah.

24 Well, in the criteria, that's a three; it's
25 not a two, or it's a four; it's not a one.

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1 In this case, R is a three. So --

2 Q So, for this R to be validated as it
3 is, the second examiner had to call the
4 first examiner back.

5 A In what year is this?

6 Q This is '95.

7 A Yes.

8 Q And the first examiner, in effect,
9 changed his mind and went along with the R.

10 A The first examiner looked at the
11 criteria and said: well, yeah, I'm wrong.

12 Q All right.

13 A That's what must have happened.

14 Q Now, from a test reliability
15 standpoint, does that bother you at all?

16 MR. HANNA: Objection.

17 THE WITNESS: It would have
18 bothered me if it wasn't validated or if
19 someone didn't -- no, it doesn't bother me.

20 BY MR. RECKER:

21 Q How do I know that the second examiner
22 called back the first examiner before
23 putting that R there?

24 A Because that is what -- that's what

25 I've observed happen. There are lots of

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1 discussions.

2 Q So, it's supposed to happen that way?

3 A It happens in my presence, yes.

4 Q But nothing is to stop the second

5 examiner from simply transferring his own

6 score to the validation box, correct?

7 A I'd say the comments are my key here.

8 When I look at the comments, I can't really

9 read it. Somebody -- the first examiner

10 obviously -- when you give Cs and nothing

11 else, you have nothing to comment. It's a

12 lovely prep. I have nothing to say. The

13 fact that the first examiner put a comment

14 in his or her handwriting tells me that

15 something was wrong.

16 Q Well, the first line says "Gingival

17 margin rough," and it corresponds with his 0

18 rough margins, okay?

19 A Okay.

20 Q It doesn't have much to do with over

21 extension; does it?

22 A No.

23 Q Look down under "internal form."

24 A Okay.

25 Q "Inclination," the second examiner gave

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1 an R.

2 A Yes.

3 Q And the validation bubble is an O.

4 Tell me how that happens.

5 A Obviously they disagreed and came to a

6 conclusion that perhaps it wasn't -- I mean,

7 Frank, the naked eye in inclination, I

8 expect that to be an area where the two of

9 us aren't going to see inclination in the

10 same way. If it were computer-generated
11 with a camera, I would say the inclination
12 is five degrees off. This is about human
13 beings looking at that window, and you are
14 veering left of center or right of center,
15 but you have to somehow come to some
16 agreement, and they went to the middle
17 ground.

18 Q Is that permissible under the
19 guidelines?

20 A Not today.

21 Q Was it in 1995?

22 A Yes.

23 Q So, in 1995, it's your belief that the
24 examiner handbook said that, if one examiner
25 gives a C, and the other gives an R, they

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1 can compromise and validate to an O.

2 A It's not a compromise. It's: look in
3 the book and see if you're both correct, and
4 if you're both incorrect, then, usually a
5 chief or a captain will come by and say:
6 hey, it really says that.

7 Q Are the summary marks accurate?

8 MR. HANNA: Objection.

9 THE WITNESS: What?

10 BY MR. RECKER:

11 Q Are the summary marks boxes properly

12 recorded according to the individual

13 assessments made?

14 A Are you talking about the validating

15 marks or this up here?

16 Q It says "summary marks."

17 A Oh, "summary marks." Okay, O for the

18 first examiner. I think there's one O for

19 the second examiner that should be an R.

20 Q Don't mark on that, please.

21 A I'm not, okay. That should be an R. I

22 mean, if I sat here and tabulated it --

23 Q Well, during an examination, you have

24 about ten seconds to do this.

25 A But you're asking me to compile both.

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1 Each examiner puts his little dots in his
2 little row and moves on. You're asking me
3 to take it from here and go to here. So,
4 I'm trying to see who --

5 Q Examiner one, there's one O under
6 "internal form," correct?

7 A Examiner one has "external form" is O;
8 "internal form" is -- yes.

9 Q So, he quickly marks "O" under
10 "internal form," correct?

11 MR. HANNA: Objection.

12 THE WITNESS: Yes.

13 BY MR. RECKER:

14 Q And the second examiner should mark
15 what under "internal form"?

16 A "Internal form," the second examiner
17 gave it an R. "Internal form," the second

18 examiner is R.

19 Q And an E.

20 A And an E under "mechanical exposure."

21 Q So, did the second examiner properly

22 fill out the summary marks?

23 A No.

24 Q Under "mechanical exposure," the first

25 examiner has the best, and the second

TACKLA & ASSOCIATES

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1 examiner has the worst. Where is that

2 validated?

3 A You see where it says "base/liner

4 request, E"?

5 Q I'm looking under "mechanical

6 exposure," the last item under "internal

7 form."

8 A Yes.

9 Q The second examiner gave that an E.

10 A E, correct.

11 Q The first examiner gave it the best.

12 That requires validation; does it not?

13 A Yes.

14 Q Do you see where it's been validated?

15 A No. I think they just wrote it down.

16 "Overcut on occlusal, near exposure, axial,"

17 yes, right there, "no base requested."

18 Q Doesn't the examiner handbook emphasize

19 in bold letters that it must be validated, a

20 disparity like this under "mechanical

21 exposure"?

22 A Does it say that in the examiner

23 handbook? I'd have to look it up.

24 Q You don't know?

25 A What normally happens --

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1 Q Do you know whether or not the examiner

2 handbook mandates that a disparity between a

3 one and an E, or a C and an E be validated

4 in the validation grid?

5 A Or written in the comments because it's

6 such a grave error. That's a grave error,

7 huge.

8 Q They have to validate it in the

9 validation bubble or write it?

10 A It's recommended to be both. Someone

11 was negligent in writing, but the actual

12 comments are key here. I would rather see

13 comments than a little bubble.

14 Q Well, I see the comments for the

15 second.

16 A I can't even read what the first one

17 is. Can you read what it says?

18 Q Would you expect the first examiner to

19 write any comments under "mechanical

20 exposure" if he deemed it was the best?

21 A I would expect, yeah, I would expect

22 something.

23 Q Why would he write something if he

24 thinks it's the best? There's not a

25 problem.

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1 A Well, it tells me that he probably
2 didn't think it was the best but didn't
3 bother to fill the bubble in. It probably
4 traumatized the first examiner, and the
5 second one came, and they discussed it.

6 Q Oh, the first examiner might have
7 looked at the exposure and got so upset that
8 he didn't fill it in?

9 A Well, it's a grave error; like I said,
10 that's a grave error. That's a stop
11 everything; you know, why didn't the
12 candidate recognize that? That's huge.

13 Q How do we know from looking at the
14 mechanical exposure grading --

15 A By the comments.

16 Q How do we know that there was an
17 exposure?

18 A By the comments.
19 Q If the first examiner has no comments,
20 and he grades it the best, and the second
21 examiner is the only one that grades it the
22 worst and has comments --
23 A Well, there's comments under first
24 examiner, but I don't know what it says. I
25 can't read it. There's comments.

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1 MR. HANNA: And you don't know
2 that -- well, objection to the form of the
3 question.
4 BY MR. RECKER:
5 Q In any event --
6 A I could speculate, but I won't.
7 Q You didn't review Dr. Baji's other
8 grading forms?
9 MR. HANNA: Objection.
10 BY MR. RECKER:

11 Q Is that correct?

12 A That is correct, if this is Dr. Baji's

13 grading form.

14 Q Now, on the summary marks grid, the

15 second examiner's "external form" grade got

16 carried to the final marks grid, correct?

17 A I'm sorry. Here or here? Here? No,

18 it didn't. "External form," the second

19 examiner, yes, yes, it has an R.

20 Q The summary marks for the second

21 examiner under "external form" --

22 A Is an R.

23 Q And that was carried to the final marks

24 grid.

25 MR. HANNA: Objection.

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1 BY MR. RECKER:

2 Q His assessment under "external form"

3 ended up being the final grade, R, under
4 "external form," correct?

5 A Yes.

6 MR. HANNA: Objection. Well, I'm
7 objecting.

8 MR. RECKER: To what?

9 MR. HANNA: The form of the
10 question. You've already gone through the
11 validation process. You've gone through the
12 summary marks. Now, you're going to leap
13 from summary to final?

14 MR. RECKER: That's what the
15 examiners do in ten seconds.

16 THE WITNESS: Well, they
17 discussed it and decided that number one
18 didn't see what he should have seen. I
19 assume this is what it means. They didn't
20 follow the criteria.

21 BY MR. RECKER:

22 Q You're assuming number one didn't
23 follow the criteria?

24 A If number one had followed and number
25 two hadn't, it would be an O, but because

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1 it's an R, number one did not follow the
2 criteria.

3 Q And the same for the last final mark
4 under "treatment management"; the E, that E
5 was given by the second examiner as you can
6 see in the summary marks grid, okay?

7 A Yes.

8 Q So, the second examiner must have also
9 persuaded the first examiner in the
10 "treatment management" markings that the
11 second examiner was more correct, and E
12 should carry the day.

13 MR. HANNA: Objection.

14 BY MR. RECKER:

15 Q Well --

16 A It's possible.

17 Q It's basically correct, right?

18 A It's possible that the first examiner

19 didn't know that a near exposure was an E,

20 and that's why we have two.

21 Q In any event, according to the

22 protocol, the first examiner had to be

23 called back and say: okay, I'll go along

24 with you, the second examiner?

25 A Or a validator, a captain, had to be

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1 called. Someone had to come back and look

2 at what -- the final decision cannot be made

3 by one person, cannot be made by one person.

4 Q It's not supposed to be made by one

5 person?

6 A It's not made by one person.

7 Q So, if examiner number one testified

8 that he was never called back on any of

9 these to consult with examiner number two,

10 that means that examiner number two didn't

11 do it right.

12 A No. It means that a captain came and

13 made a decision with examiner number two.

14 Q Is it your understanding that examiner

15 2 can bypass consulting with examiner number

16 1 and go right to the captain?

17 A The captain is the highest authority,

18 yes.

19 Q Is it your understanding according to

20 the NERB or CORE guidelines that examiner

21 number 2, when he sees a disparity in the

22 grading, he does not have to call back

23 examiner number 1?

24 A He does not have to.

25 Q He can go right to a captain?

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1 A Correct.

2 Q And get validation from the captain.

3 A Correct.

4 Q All right. So --

5 A He can, yes.

6 Q So, in this case, assuming examiner

7 number one was not called back --

8 A Okay.

9 Q -- then we must assume that examiner 2

10 obtained validation from the third person,

11 the captain.

12 A Yes.

13 Q Isn't that supposed to be recorded

14 somewhere if a third person came along and

15 made the decision?

16 A Yes, it should be recorded. At that

17 time it was not a requirement.

18 Q Dr. Awadalla, as a member and former

19 president of the Dental Board, is it your

20 understanding that the Dental Board is

21 required to keep official minutes of its

22 proceedings?

23 A Yes.

24 Q Can the Dental Board take any action,

25 official action which is not reflected in

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1 its minutes?

2 MR. HANNA: Objection.

3 BY MR. RECKER:

4 Q Should all official actions of the

5 board be reflected in the board's minutes?

6 A Most official actions are.

7 Q Are there some that aren't?

8 A I suppose in an emergency situation,

9 things can be voted on by phone or discussed

10 otherwise.

11 Q Have you ever done that?

12 A We've discussed media events, yes, by

13 phone. If something happens while the board

14 is not in session, we have to carry on. We

15 can't wait until the next meeting.

16 Q So, is it your opinion --

17 A Personnel problems, business; I mean,

18 we are a board around the clock, not just

19 once a month.

20 Q So, is it your opinion that the board

21 can conduct official business over the

22 telephone?

23 A In emergency situations, I believe we

24 can.

25 Q Is any public notice required of that

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1 action, if you know?

2 A I don't know, Frank; I don't know.

3 Q In your opinion as a member of the Ohio

4 State Dental Board, which board requires the

5 NERB examination for purposes of initial

6 licensure in Ohio, does the NERB have an

7 obligation to develop a valid and reliable

8 examination?

9 MR. HANNA: Objection.

10 THE WITNESS: Yes.

11 BY MR. RECKER:

12 Q Does the Ohio State Dental Board, as an
13 entity, expect the NERB exam to be valid and
14 reliable?

15 MR. HANNA: Objection. She's not
16 here testifying on behalf of the Dental
17 Board.

18 MR. RECKER: We'll get to that
19 when we get to her opinion.

20 BY MR. RECKER:

21 Q Do you know?

22 A I expect that it is. I believe it is.

23 Q So, you expect NERB to develop and
24 administer a valid and reliable examination;
25 is that correct?

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1 A Yes, and I believe NERB does administer
2 and develop a reliable and valid exam.

3 Q Do you believe the Dental Board has an

4 obligation to the public to ensure that the
5 licensure exam that it requires, in fact, be
6 valid and reliable?

7 MR. HANNA: Objection.

8 THE WITNESS: The obligation to
9 the public is to make sure that those taking
10 an exam are not squeaking by without
11 fulfilling a minimum competency requirement
12 so that the public is not harmed, and that's
13 why an exam of that kind is the only
14 acceptable exam, so we have an obligation to
15 the public.

16 BY MR. RECKER:

17 Q Let me rephrase it. As I understand
18 your report, which we'll get to in a minute,
19 your job is to protect the health and
20 welfare of the public from incompetent
21 dentists.

22 A Correct.

23 Q And to do that, you rely on the
24 licensure exam to weed out those who are not
25 minimally competent to practice dentistry.

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1 MR. HANNA: Objection.

2 THE WITNESS: That's correct.

3 BY MR. RECKER:

4 Q All right, and it's therefore important

5 to you as a board that that exam be able to

6 differentiate between those who possess a

7 minimum level of competency and those who do

8 not, correct?

9 A Yes.

10 Q Do you agree that in order to

11 differentiate between those dentists who

12 possess a minimum level of competency and

13 those who do not, the licensure exam must be

14 valid and reliable?

15 A Yes.

16 Q So, would it be fair to say that, if

17 the Dental Board was accepting any dental

18 licensure exam or any regional board which

19 was not valid and reliable, it would be

20 placing the public health and welfare in

21 jeopardy?

22 MR. HANNA: Objection.

23 THE WITNESS: If the exam was not

24 valid or reliable?

25 BY MR. RECKER:

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1 Q Valid and reliable.

2 A And reliable, you're asking me if

3 passing that exam would --

4 Q If you're accepting for licensure an

5 examination which is not valid and reliable,

6 you would not be doing your job to protect

7 the public health and welfare, correct?

8 A Yes.

9 Q And would you agree that an examination

10 which is invalid and unreliable could also

11 be failing those who possess minimum levels

12 of competency?

13 A I'm not sure that's true.

14 Q Let me ask you this: is it your

15 understanding that a valid and reliable

16 examination can differentiate between

17 dentists who possess minimum levels of

18 competency and those who do not?

19 A It should, yes.

20 Q Therefore, is it your understanding

21 that an examination which is invalid and

22 unreliable cannot differentiate between

23 those who possess minimum levels of

24 competency and those who do not?

25 A If you really think about that, Frank,

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1 it's not always true. It can still

2 differentiate between the two, but we don't

3 find that a fair assessment. We can't rely

4 on it every time.

5 Q So, is --

6 A An invalid exam or an unreliable exam

7 can still probably differentiate between the

8 highest and lowest levels. The converse

9 isn't always true, is what I'm trying to

10 say, okay?

11 Q If the exam is not valid and reliable,

12 you don't know really what it's doing; do

13 you?

14 A Yes. You're telling me it does not

15 differentiate, but it probably doesn't

16 consistently differentiate. You can still

17 pass a nonvalid, nonreliable exam. It

18 doesn't mean you're an idiot just because

19 you passed it. Is that what I want to look

20 for? No. I don't believe that's a

21 consistent way of looking at candidates. Do

22 you know what I'm saying?

23 Q Okay.

24 A Yes, I mean --

25 Q I'm going to hand you what we'll mark
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1 as Awadalla Exhibit 3.

2 (At this time Plaintiff's Exhibit
3 3 was marked for identification purposes.)

4 BY MR. RECKER:

5 Q For my questions, Dr. Awadalla, just
6 accept my representation that this is a
7 composite of various Dental Board minutes,
8 and I've numbered the pages at the bottom
9 from one to 21. The first page numbered one
10 at the bottom is what it is, minutes of
11 September 16, 1994. Now, this would be
12 after you were appointed to the board,
13 correct?

14 MR. HANNA: Let me just state for
15 the record that I'm not quite sure where
16 this composite came from or whether it's a
17 complete composite. Is this something that
18 you just put together, or are these all of
19 the minutes?

20 MR. RECKER: Rob, all I'm asking
21 her to do is accept for these questions my
22 representation that each page is what it

23 says it is, and if it's eventually shown
24 that I'm wrong, which I'm not, then, of
25 course, all of the questions are down the

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1 drain.

2 MR. HANNA: Is it a complete set
3 of the minutes from, let's say, September
4 16?

5 MR. RECKER: Absolutely not, only
6 selected pages dealing with these issues.

7 MR. HANNA: Okay. Make sure my
8 objection is preserved because I think that
9 it's misleading to give her just a partial
10 excerpt of minutes.

11 MR. RECKER: How do you know that
12 when I haven't asked the question?

13 MR. HANNA: I'm just preserving
14 my objection.

15 MR. RECKER: All right.

16 BY MR. RECKER:

17 Q Dr. Awadalla, the first page is for

18 September 16, 1994, a portion, page three of

19 the minutes.

20 A Okay.

21 Q You were on the board at that time,

22 correct?

23 A Uh-huh.

24 Q Halfway down it says "Regional Board

25 Dental Applications," and it says what it

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1 says. "The following applications were

2 presented to the board for approval due to

3 passage of a regional board examination, the

4 National Board examination and the Ohio

5 examination on the statutes and

6 regulations." My question is: at this

7 time, at this meeting, you were accepting

8 for purposes of initial licensure in Ohio

9 any regional board; is that correct?

10 A This is correct.

11 Q All right, and that could have been

12 Western Regional Examining Board or WREB,

13 SRTA, S-R-T-A, CRDTS, C-R-D-T-S, OR NERB,

14 N-E-R-B, correct?

15 A Correct.

16 Q And at the time you were accepting all

17 of these regional boards for purposes of

18 licensure, was it your belief that all of

19 these exams were valid and reliable dental

20 licensure examinations?

21 A At that time it was my belief.

22 Q Is it fair to say it was the entire

23 board's belief or they wouldn't have

24 accepted it?

25 MR. HANNA: Objection.

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1 THE WITNESS: Yes.

2 BY MR. RECKER:

3 Q The second page, the November 16 and

4 17, '94 minutes, Regional Dental Board

5 Applications, again we have the same

6 scenario, page two. At that meeting as

7 reflected in these minutes, these candidates

8 took a regional board, and based upon that

9 passing of a regional board, any one of the

10 four we just mentioned, they obtained their

11 initial license to practice dentistry in

12 Ohio, correct?

13 MR. HANNA: Objection.

14 THE WITNESS: Correct.

15 BY MR. RECKER:

16 Q The minutes don't even talk about which

17 board was passed; do they?

18 A That's reviewed on a case-by-case

19 basis.

20 Q So, the staff secretary gives the

21 applications to the board with the

22 representation that they have passed a

23 regional board examination.

24 A Correct, and they are reviewed. They

25 sit to the left of the board president, and

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1 they're each reviewed.

2 Q So, by looking at these people who got

3 licensed on this page two, we don't even

4 know what regional board they took, correct?

5 A It would be one of the four.

6 Q The board viewed them all as equal, at

7 least at this time.

8 A The board accepted the other three,

9 yes.

10 Q Page three of this exhibit, it's dated

11 February 15 and 16, 1995. Again, we have

12 the same thing in the middle of the page,

13 licensure based on passing any regional

14 board, correct?

15 A Correct.

16 Q Next, page four, March 15 and 16, 1995,

17 page three of the minutes, again the same

18 thing?

19 A Correct.

20 Q And, yes, you're a member during all

21 this time, correct?

22 A Yes.

23 Q All right. The next page, page five on

24 the bottom, it's minutes dated June 21 and

25 22, 1995, page three of the minutes, and

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1 then we have regional board applications at

2 the bottom, and quite a long list of

3 individuals who became licensed based on

4 passing any regional board, correct?

5 A Correct.

6 Q In addition to the National Board

7 examination and the Ohio exam; is that

8 correct?

9 A Correct.

10 Q Page six, the bottom, the same thing,

11 we're into July 19, 1995, correct?

12 A Yes.

13 Q And, again, is it fair to conclude that

14 the Ohio State Dental Board as of this date

15 still believed all regional boards were

16 valid and reliable licensure examinations?

17 A Yes.

18 Q All right.

19 A How many years of this are we going to

20 do?

21 Q Not many more. Page seven, the same

22 thing?

23 A Okay.

24 MR. HANNA: What's the "same

25 thing"?

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1 BY MR. RECKER:

2 Q I'm sorry. October 16, 1996, again,
3 the board is accepting all regional boards
4 for purposes of initial licensure?

5 A (At this time the witness nodded her
6 head.)

7 Q The next page, page eight --

8 MR. RECKER: Rob, before you have
9 a heart attack, it's marked "draft copy,"
10 but it's not. It doesn't frequently occur
11 where the draft copies have a certification
12 signed by the executive director of the
13 board on the top page indicating that
14 they've been approved, but accept my
15 representation that this is also reflective
16 of the final version.

17 BY MR. RECKER:

18 Q Page eight of this exhibit is page
19 three of the November 20 and 21, 1996
20 minutes, and the board is still accepting
21 all regional boards, correct?

22 A Correct.

23 Q January 8 and 9, the next page, page

24 four of the minutes, the board is still

25 accepting all regional boards; as it

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1 reflects at the bottom, "Review of License

2 Applications," correct?

3 A Correct.

4 Q And one of those who became licensed

5 was Dr. Baji at that meeting, correct?

6 A Correct.

7 Q So, Dr. Baji had passed a regional

8 board which the Dental Board felt to be a

9 valid and reliable examination, and based

10 upon that, he became licensed in Ohio,

11 correct?

12 A That is correct.

13 Q The next page, page ten, February 12

14 and 13, 1997, we still have the Dental Board

15 accepting all regional boards, correct?

16 A Yes.

17 Q Page 11 which is page four of the March
18 26 and 27, 1997 board minutes, and again,
19 the first item, "Review of License
20 Applications," and the following persons
21 applied for dental licenses based on
22 successful completion of regional board
23 examinations, et cetera. So, in March of
24 1997 the board is still accepting all
25 regional boards, correct?

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1 A Correct.

2 Q Page 12 is page 22 of the March 26 and
3 27, 1997 board minutes. Are you with me?

4 A Yes.

5 Q At the bottom, "Anything for the Good
6 of the Board," there's a report of a meeting
7 of the AADE given by Dr. Lightfoot, I
8 believe. A report is given; I don't know

9 who gave it. In any event, the third last
10 bullet says, "National Board failure rate up
11 from ten percent to 15 percent." Do you
12 recall that being significant in any way to
13 the Dental Board?

14 A It's always a concern when more kids
15 are failing.

16 Q The last bullet indicates ten percent
17 of the students who pass the National Board
18 fail the NERB written. Do you recall that
19 being of any concern to the dental board?

20 A No, they're different exams.

21 Q So, is it your understanding that the
22 NERB written and Part II of the National
23 Boards are different exams?

24 A Yes.

25 Q Different how?

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1 A One is case based and the other is more
2 of a science based exam. They're very
3 different.

4 Q So, Part II of the National Boards and
5 the NERB written are very different exams?

6 A They're different exams.

7 Q I'm talking about content wise.

8 A Yes.

9 Q Page 13, the next page, April 23 and
10 24, 1997, page 13 of the board minutes, at
11 the bottom there's a Policy Committee report
12 given by Dr. Demkee, and if you would, take
13 your time and read that. It goes over to
14 the next page.

15 A Done.

16 Q You're finished?

17 A You just wanted me to read this one
18 little part, right?

19 Q And the next page.

20 A Oh, the whole thing.

21 Q Go to the end of page 14.

22 A Okay. Just to here?

23 Q It goes to the top of page 15.

24 A Yes, yes, I read it.

25 Q Now, going back to page 13 --

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1 A Okay.

2 Q -- 13 of the minutes and 13 of the
3 exhibit, it starts with "Policy Committee
4 Report." Who was on the Policy Committee in
5 April, 1997? Do you know?

6 A I don't recall exactly who was on the
7 Policy Committee; board members.

8 Q At this meeting as you just read, the
9 board decided to drop or not accept any
10 regional board other than NERB for purposes
11 of initial licensure in Ohio, correct?

12 A Correct.

13 Q All right, and first of all, is it your
14 understanding that the board can do this
15 just by a vote at a meeting?

16 A Yes.

17 Q Going to page 14 where it says in the
18 second paragraph, "Dr. Demkee stated," can
19 you tell me at this meeting, was there any
20 report from an outside psychometrician for
21 the Dental Board, any consultant that gave a
22 report which said essentially what Dr.
23 Demkee was saying here, that other boards
24 are easier to pass, and Dr. Lightfoot says
25 they're unequal tests, not equivalent to

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1 NERB? I mean, other than these statements
2 in these minutes, was there any kind of data
3 or study presented by Demkee or Lightfoot?
4 A You're assuming that the agreement or
5 disagreement is psychometrically based, and
6 they're not. The reason for the move was
7 not based on numbers; it was based on
8 information. The other regional exams were

9 different than NERB in two key areas that we
10 felt compromised the results of the other
11 exams.

12 Q Explain that to me. Did this
13 difference occur between March and April of
14 1997?

15 A This probably was around for longer
16 than that. It's just that we weren't aware
17 of it.

18 Q Okay.

19 A I don't know when the other regional --
20 first of all, I wasn't on the board in '91.
21 So, accepting other regional boards was not
22 my decision, but I assume that research was
23 done, and they could tell that the exams
24 were similar, very similar.

25 Q Research was done by whom?

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1 A By members of the board to see that the

2 exams were similar.

3 Q What members of the board?

4 A In '91, I don't know who instituted the
5 policy.

6 Q I'm not talking about that.

7 A Okay.

8 Q I'm talking about April of '97.

9 A You asked me if it happened overnight.

10 The board walked in on a policy that
11 accepted all regional exams. Throughout the
12 years that we were on the board, the board
13 then found out that that was, in fact, not
14 true.

15 Q Who found out?

16 A The board.

17 Q You did?

18 A I know the reasons, yeah.

19 Q When did you find out, and what did you
20 find out?

21 A Okay. I found out; I can only speak
22 for myself, that the scoring method for the
23 other three regional exams was different
24 than NERB's.

25 Q When did you find that out?

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1 A Through discussions probably in the
2 three or four months that preceded, five
3 months; I can't recall, but the board
4 doesn't come to decisions just by coming up
5 with a few statements. We asked: how do
6 you grade --

7 Q My question would be --

8 A -- your exams?

9 Q -- if an Ohio State senator or
10 legislator walked into the board office and
11 looked at these minutes and said: now, Ms.
12 Kaczmarek, hand me the data upon which the
13 board based this decision, what would you
14 say? We heard about it?

15 A We called the other examining -- we
16 attend meetings, AADE meetings that review

17 the four regional boards. What do you do?

18 What do you do? Let me tell you the two

19 reasons, and you can call them and see if

20 I'm right or not, the two reasons why we

21 believe this is a better exam.

22 One, there were rumblings and the

23 eventual drop of the written simulated exam

24 which I believe is an integral and important

25 part of this examination, and it was

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1 completely dropped by the other three

2 regional boards. And, the second is, the

3 scoring mechanism, the conjunctive scoring

4 mechanism which I think is important; that

5 is, each key competency is as important as

6 another key competency, that you cannot be a

7 decent dentist and not hurt the citizens of

8 Ohio by being able to do a root canal and

9 not a filling. We don't give limited

10 licenses. We give licenses to practice

11 dentistry. You must pass the key

12 competencies.

13 Q I'm sorry. This conjunctive --

14 A It's the scoring method for the

15 Northeast Regional Board.

16 Q And am I to assume it's not the scoring

17 method for the other regional boards?

18 A It's not.

19 Q When did you learn that?

20 A Here we go; I don't know the exact

21 month, but it was --

22 Q Did you put this data in the minutes?

23 Did you attach this proof to these minutes

24 as a foundation for this decision, or is

25 this just all hearsay?

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1 A It's not hearsay. If you're asking me:

2 is it documented word for word, it's not
3 documented. You can see these are the
4 minutes, but it was definitely discussed in
5 greater detail.

6 Q Where?

7 A During board meetings.

8 Q Can you --

9 A Well, I wish we had recorded minutes.
10 I wish we had a tape-recorder. This is just
11 --

12 Q So, is it your testimony that between
13 the time you got on the board and April of
14 '97, at various meetings this was discussed?

15 A Yes.

16 Q So, it would be in the minutes.

17 A It was discussed at AADE meetings at
18 which we don't take minutes. We discussed
19 it as a group: the four regional boards,
20 why are we doing this? How are you scoring?
21 At various AADE meetings, each region
22 presents what they do. This is how we
23 conduct our exam. That's part of getting
24 better. We look at each other for

25 solutions. This is when we found out that

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1 we aren't using the same scoring mechanisms.

2 Q By "when we found out," you're talking

3 about the March, 1997 AADE meeting?

4 A It was prior to this meeting that the

5 board was aware that there were significant

6 differences between the Northeast Regional

7 Board and other regional boards.

8 Q Was it just prior; was it the March,

9 '97 AADE meeting?

10 A Probably it was even more prior. You

11 start by hearing something, and then as we

12 talked, you call; you discuss; you find out:

13 is it really true? Exactly how are you

14 scoring? What are you doing?

15 Q Where is the data? Where are all of

16 the answers to the questions you're just

17 asking?

18 A Call any of the other --

19 Q The board made the decision. Where is
20 that data upon which the board made the
21 decision?

22 A Is it more important to have it in
23 writing than reality? I'm telling you what
24 the reality is. Those regional boards do
25 not score the way we do. Whether you want

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1 to see it in minutes or not is not
2 significant. It exists. It's real. It
3 happens every day. That's what is important
4 to me.

5 Q Because they don't score the way NERB
6 scores means their exams are invalid and
7 unreliable?

8 A Because of how they score. They score
9 in a cumulative fashion. In other words,

10 you can literally not be able to prepare a
11 tooth, as was the case in this case, and you
12 can pass other parts of an exam and still
13 pass the full exam while you fail a key
14 competency area. You can fail periodontics
15 and restorative and still pass the full
16 exam.

17 A big concern for us in Ohio, we
18 don't like that, because we don't give a
19 license that says: any time you need to do
20 a filling, go ahead and take the tooth out
21 because you didn't pass the restorative
22 section. How do you protect the citizens
23 three-quarters of the way? You can't.

24 So, that was a big area of
25 concern. The other was the written

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1 simulated. For those two reasons, Lecturer
2 Lightfoot says it's a better exam. In my

3 eyes, that justifies the word, better. It's

4 a more thorough exam.

5 Q So, at some point prior to April of

6 '97, the board learned of the difference in

7 scoring of the different regional boards.

8 A Correct.

9 Q And deemed that they didn't like that;

10 it was not satisfactory to the Ohio State

11 Dental Board?

12 A Correct.

13 Q That's one reason the board enacted

14 this policy in April of '97?

15 A That is the reason, correct.

16 Q The other reason?

17 A The written simulated.

18 Q It's your information that the other

19 boards did not have a written simulated?

20 A They did. For many years they used

21 NERB's, but for some reason they would lower

22 the bar to pass more kids, to skip on one

23 part of the exam and just let them go in

24 with the National Boards.

25 Q Now, how do you know --

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1 A My opinion.

2 Q -- it was to pass more kids?

3 A Well, it's obvious; isn't it? Why else

4 would you eliminate that? What would happen

5 if, at the next bar exam, you accepted 200

6 points? Do you expect more people to pass

7 and become lawyers? It's obvious. If you

8 take away part of the exam, more people are

9 going to pass, right?

10 Q Let me ask you this question: what if

11 the other boards determined that the NERB

12 written was an invalid and unreliable

13 examination, and that's why they dropped it?

14 A Show me.

15 Q Did you inquire?

16 A I don't believe that. Yes, and it was

17 obvious political pressure.

18 Q How did you ascertain "obvious
19 political pressure"?
20 A At AADE meetings, talking to other
21 members of SRTA, Western. What we also
22 found out which is very interesting is that,
23 while they dropped the NERB simulated
24 written exam, they picked up something else
25 called the bench test. So, they basically

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1 changed the wording, took the written NERB
2 simulated and made it into a bench test and
3 called it --
4 Q Who did?
5 A California, for example, a huge example
6 of taking something they consider as
7 important and moving it into something else,
8 another category. Some of the members of
9 other boards or other regional boards
10 mentioned that it was expensive. I mean, we

11 can't -- I can't tell you every reason why
12 someone doesn't do something. I can tell
13 you why I do something.

14 Q So, based on what you were told by
15 other people --

16 A Not other people; members of other
17 regional boards, not friends, family, but
18 members of other regional boards, the three
19 we're talking about.

20 Q So, based on what you were told by
21 members of CRDTS, WREB and SRTA --

22 A And California and Florida. I mean, I
23 know a lot about a lot of other boards.

24 We're not living in a bubble.

25 Q So, based on what you were told, you

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1 came to the conclusion that these exams were
2 not valid and reliable testing mechanisms

3 satisfactory to the Ohio State Dental Board?

4 MR. HANNA: Objection.

5 THE WITNESS: For initial

6 licensure.

7 BY MR. RECKER:

8 Q For initial licensure?

9 A Yes.

10 Q Did you personally view any

11 psychometric data about any of those tests?

12 A It wasn't -- this isn't a psychometric

13 issue. This is an issue about content.

14 This wasn't a psychometric issue, and pure,

15 simple scoring, a compensatory method versus

16 conjunctive, a big difference in what the

17 outcome is.

18 Q In your opinion, psychometrics had

19 nothing to do with your decision?

20 A Not with this decision, no, no, but if

21 there was a psychometric analysis, I would

22 look at that. We look at that at every

23 meeting, but this was about content.

24 Q Okay. Have you ever looked at a

25 psychometric analysis for the other regional

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1 boards?

2 A No.

3 Q On page 15, "Dr. Williams stated that
4 the tests are different now than they were
5 in 1991/1992, and that there now was a need
6 to return to the original policy of
7 accepting only the NERB."

8 A Yes.

9 Q Other than his conclusion that the
10 tests are different now, what evidence, what
11 data, what information was there?

12 A The tests in 1992, I believe, had the
13 written simulated exam; it doesn't now.

14 They were taking the written simulated --
15 the bench test as we call it.

16 Q Who was?

17 A The other three regional boards.

18 Q So, was it your information in April of

19 '97 that the other three regional boards --

20 A Had slacked off.

21 Q -- had slacked off?

22 A Yes.

23 Q In the ways you just described?

24 A Two ways.

25 Q That being the scoring?

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1 A Correct.

2 Q And not having a written exam.

3 A Correct.

4 Q Okay. Had you seen any study upon

5 which California made their decision to stop

6 using the NERB written exam?

7 A I believe the president, which is

8 Christianson; I'm not sure if that's his

9 name, at his AADE meeting in Chicago in

10 February of 1999, he presented, and

11 basically said it was replaced by a bench

12 test for cost reasons. The NERB simulated

13 exam was expensive.

14 Q My question to you was: have you seen

15 any reports upon which the California board

16 made their decision to stop using the NERB

17 written exam?

18 A That report would be an expense report;

19 no.

20 Q I'm talking about any report from an

21 independent firm who analyzed the NERB

22 written exam for the California board.

23 A No.

24 Q You never saw any such report?

25 A No.

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1 Q So, all of the reasons upon which the

2 board made their decision in April of '97 to

3 stop accepting the other regional boards are

4 contained in these minutes; is that correct?

5 A Well --

6 MR. HANNA: Objection.

7 THE WITNESS: I clarified for you

8 what the reasons were.

9 BY MR. RECKER:

10 Q You explained it.

11 A Yes.

12 Q Okay, but you could not give me any

13 documentation substantiating the reasons you

14 just explained. There's nothing in the

15 board office right now substantiating what

16 you just told me?

17 A You mean in written form?

18 Q Correct.

19 A I could look. I'm not sure. I mean,

20 we could have copies of the other exams. We

21 bring back all kinds of stuff from AADE that

22 describes -- I have copies of California and

23 what they use, et cetera, but I didn't think

24 it was important to bring copies of the

25 California test.

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1 Q So, other than what you heard, what you
2 talked about, did the Dental Board conduct
3 any independent analysis of its own of these
4 exams from the other regional boards?

5 MR. HANNA: Objection.

6 THE WITNESS: I attended --

7 MR. HANNA: That's okay.

8 THE WITNESS: By attending AADE
9 meetings and sitting through what each
10 region does in their jurisdictions, that's
11 the best I can do. I don't have influence
12 over those jurisdictions. All I can do is
13 view what they do.

14 The decision was made. We each
15 went to a different one. We repeatedly go
16 to those meetings for specifically that
17 reason. If you're going to let someone come
18 in on another exam, you need to know

19 something about it. We listen to what
20 they've done. They've changed their scoring
21 mechanism, and they also do not give the
22 written simulated. Those were the reasons.

23 BY MR. RECKER:

24 Q Page 29 -- I'm sorry, page 16 in the
25 exhibit.

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1 MR. RECKER: Counsel needs a
2 break.

3 MR. HANNA: Is this a good
4 breaking point?

5 MR. RECKER: Fine, go.

6 (At this time a short recess was
7 had.)

8 BY MR. RECKER:

9 Q Doctor, turning to page 17 in the
10 exhibit, at the bottom it says 17.

11 A Okay.

12 Q In the middle of the page, it says,
13 "Discussion followed wherein Dr. Awadalla
14 --" Do you see that?
15 A Uh-huh.
16 Q Just read that.
17 A Got it.
18 Q It indicates that you explained the
19 board has input into the regional exam, and
20 that's a better exam because it's blind and
21 anonymous.
22 A It's a double blind exam; that's
23 correct.
24 Q Now, you don't mention the conjunctive
25 grading, and you don't mention the lack of a

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1 written.
2 A I think she was bored or he was bored.
3 So, I mean --

4 Q He was what?

5 A This person really -- this -- the
6 matter -- I mean, it was repeating what we
7 already know. I mean, how many which ways
8 do you want it? I mean, we don't repeat.

9 Q You added another dimension. You said
10 it's a better exam than Florida's because
11 it's blind and anonymous.

12 A Yes.

13 Q You said the issue was the Florida
14 examination.

15 A I have an issue with state only, the
16 Florida exam.

17 Q What do you know about --

18 A The Florida exam.

19 Q -- the validity and reliability of the
20 Florida dental licensure examination?

21 A I know from listening to the president
22 of the Florida Dental Board how they conduct
23 their examinations. He did a presentation -
24 and I had gotten some information just
25 because many, many practitioners want to go

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1 to Florida; it's where everybody wants a
2 license - as to how to get a Florida
3 license, just like North Carolina, just like
4 it's information you gather through the
5 years through experience, through life.

6 Q So, based on this --

7 A I wasn't impressed with Florida, okay?

8 I wasn't impressed. I have a problem with
9 Board members only examining students. I
10 have a problem with the information phase,
11 and I just think that NERB is a much fairer
12 and cleaner exam.

13 Q All right. So, one of the reasons you
14 didn't like Florida was because you have a
15 problem with the Board members themselves
16 conducting the exam?

17 A Yes, anybody. I have a problem with me
18 -- I have a problem with the Ohio only exam,
19 okay? I'm not discriminating.

20 Q You'd be surprised that the Florida
21 board doesn't do any examining, that the
22 Florida Board members don't examine at all?
23 A I have a problem with the exam from the
24 recitation that the Florida Board member --
25 I mean, I can only listen to the highest

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1 power in Florida. I've never taken the exam
2 and have no intention of taking it. I have
3 a problem with the exam.

4 Q In these --

5 MR. HANNA: Just let her finish
6 her answers, and you can ask your questions.

7 THE WITNESS: Go ahead.

8 MR. RECKER: I'm helping you
9 out. In these minutes --

10 MR. HANNA: Don't try to help me
11 out.

12 MR. RECKER: All right, then I

13 won't.

14 BY MR. RECKER:

15 Q In these minutes that we're talking

16 about, it was denying somebody a license

17 because the board declared, deemed that the

18 Florida examination was inferior to the NERB

19 examination.

20 MR. HANNA: Objection.

21 BY MR. RECKER:

22 Q Correct?

23 A Yes.

24 Q All right, and the evidence upon which

25 they made that decision is contained here in

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1 the minutes.

2 A No. This is a brief, brief, brief

3 summary of meetings and discussions and

4 attending other presentations of all other

5 testing agencies so we can come up with that

6 brief note.

7 Q And you don't have any kind of a

8 written report documenting your conclusions

9 about the Florida dental license exam?

10 A I do not have a written report, no.

11 Q The board doesn't.

12 A No, nor do I understand that legally I

13 have to.

14 Q All right. So, if a state senator

15 walked in and said: my son was denied a

16 license in Ohio because you declared the

17 Florida exam was inferior to NERB's, and

18 upon what did you base that conclusion,

19 you'd have to say: it's just a lot of

20 things we intended to listen to and heard

21 and our conclusion.

22 MR. HANNA: Objection.

23 THE WITNESS: Well, let me just

24 tell you, you study something by attending

25 meetings, okay, by reading about it, by --
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1 now, does anything and everything you study
2 need to go down in document form so that you
3 can prove that you were there or that you
4 studied it? I was at meetings. I listened
5 to the Florida -- I believe the president of
6 the board talk about the exam. I saw flaws
7 in the exam. Now, the fact that I didn't go
8 into great detail at the time, if the dad
9 came in, I would spend hours with him
10 explaining exactly what the differences are,
11 one of which was the scoring mechanism.

12 BY MR. RECKER:

13 Q You don't consider yourself an expert
14 in dental testing; do you?

15 A No.

16 MR. HANNA: Objection.

17 THE WITNESS: But this is pretty
18 simplistic. Any idiot can figure it out.

19 BY MR. RECKER:

20 Q Tell me what's so simplistic.

21 A When you fail restorative dentistry and
22 still pass a dental exam, that's a problem,

23 okay, because --

24 Q Where does this happen?

25 A It happens in SRTA, in Florida,

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1 California, I believe, Western and Central.

2 Q So, you can fail the entire restorative

3 dentistry component of the examination?

4 A And still pass.

5 Q And still pass the examination?

6 A Right. When we asked Florida that

7 question, there was no response. It's a

8 compensatory method of grading.

9 Q On page 19 of the exhibit, the bottom

10 of the page, it's page 39 of the November

11 12th and 13th, 1997 board meeting.

12 A Okay.

13 Q Dr. Demkee is talking about NERB being

14 the premier regional testing agency because

15 each of the members of the board, excluding
16 the public member, has direct input into the
17 creation of the examination including its
18 structure and the way it's administered. In
19 your opinion, is that how you determine
20 whether or not a regional board is a premier
21 testing entity?

22 MR. HANNA: Objection. Do you
23 have the rest of this document? It also
24 says, "Dr. Demkee further stated that --"

25 MR. RECKER: I wish I had it.

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1 MR. HANNA: There's nothing after
2 that.

3 MR. RECKER: Then, I'll --

4 MR. HANNA: Well --

5 THE WITNESS: I have an answer
6 for everything.

7 MR. HANNA: If you can answer his

8 question.

9 THE WITNESS: Well, you know, it
10 depends on how you define "premier." We
11 certainly, absolutely want to be involved in
12 any test that's given to protect the
13 citizens of Ohio. I would consider it
14 unacceptable not to be involved in the
15 testing. I need to look at what the test is
16 about to make sure that it's double blind,
17 that it's fair, that -- you know, I want to
18 be involved. I want to have input, and
19 that's what he meant by that.

20 BY MR. RECKER:

21 Q Page 20 of this exhibit, it's actually
22 page 31 of the April 29th and 30th, 1998
23 board minutes. It starts at the top,
24 "Policy on Criteria Approval --" Can you
25 review that to familiarize yourself with

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1 that?

2 A All right.

3 Q Okay. Now, the rule he's talking about

4 that went into effect this past Monday

5 regarding licensure by credentials, what was

6 the purpose of that rule? Do you recall?

7 MR. HANNA: Objection.

8 THE WITNESS: You mean after --

9 what are you talking about?

10 BY MR. RECKER:

11 Q The rule that he said went into effect,

12 47 15-5-03 regarding licensure by

13 credentials, what precipitated that new rule

14 or the amended rule he's talking about? Do

15 you know?

16 MR. HANNA: Objection.

17 THE WITNESS: I believe the fact

18 that we'll accept credentials with five

19 years of practice plus the regional board

20 and that we'll review that every year. I

21 need to see 47 15-5-03.

22 BY MR. RECKER:

23 Q My question was: do you recall what
24 precipitated the board amending that
25 regulation?

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1 MR. HANNA: Objection. To the
2 extent that you don't have that in front of
3 you, don't guess.

4 THE WITNESS: Yeah, I can't guess.

5 BY MR. RECKER:

6 Q So, on this date, the board votes to
7 adopt the policy that's spelled out here,
8 that it's NERB only; is that essentially
9 what they're saying here?

10 MR. HANNA: Objection.

11 THE WITNESS: That for initial
12 licensure, the exam we accept is the
13 Northeast Regional Board on initial
14 licensure.

15 BY MR. RECKER:

16 Q So, you have a rule that says you can
17 decide by policy what exams you'll accept
18 for licensure; is that it?

19 A I'm sure we're working within the law.
20 We're surrounded by attorneys.

21 Q The next page, the last page of the
22 exhibit --

23 A 21.

24 MR. HANNA: Which one?

25 MR. RECKER: The last page.

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1 MR. HANNA: My pages are messed
2 up here. One of my pages has a back page,
3 and there's no number on it.

4 MR. RECKER: That's true. I only
5 numbered the front pages.

6 BY MR. RECKER:

7 Q Page 21, it's actually page 34 of the

8 April 29 and 30th, 1998 board minutes. In
9 the middle of the page it says, "California
10 Board of Dental Examiners Occupational
11 Analysis," Dr. Weiss had submitted for the
12 board's review a copy of the California
13 Board of Dental Examiner's Occupational
14 Analysis which explained why the state of
15 California no longer uses the NERB written
16 examination. He stated that he would like
17 the Board members to review the information
18 and possibly discuss their thoughts at the
19 next board meeting."

20 A Yeah.

21 Q Do you recall reviewing that report?

22 A Yes, yes.

23 Q What did it say? What were its
24 conclusions?

25 MR. HANNA: Objection.

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1 THE WITNESS: I'm not going to
2 guess, and I'll tell you why I'm not going
3 to guess, because after April 29th, which is
4 over a year ago, we attended meetings where
5 the president of the California board
6 discussed further the rationale. So, I'm
7 getting confused as to the difference. The
8 bottom line in my mind is that it's cheaper,
9 but it's the same exam, and it's on a desk
10 where they felt they could just see the
11 partials instead of look at them on a
12 computer. Cheaper was the gist.

13 BY MR. RECKER:

14 Q Let me hand you what we'll mark as
15 Awadalla Exhibit 2.

16 (At this time Plaintiff's Exhibit
17 2 was marked for identification purposes.)

18 BY MR. RECKER:

19 Q Doctor, can you identify this?

20 A Yup, "Report on NERB Examination, Re,"
21 I wrote this.

22 Q Now, Doctor, isn't it true that someone
23 other than you drafted the initial outline

24 of this report?

25 A I instructed someone on the phone to

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1 draft the initial outline, and then I added

2 to it.

3 Q All right. The point is, somebody

4 drafted this report and, then, submitted it

5 to you for modification?

6 A Per my request because I don't have a

7 typist.

8 Q How many times did it go back and forth?

9 A Probably once.

10 Q And that was with Nick York?

11 A Yes.

12 Q Was the final typed version sent from

13 Nick York to you for signing?

14 A Yes.

15 Q Did you sign this in your office?

16 A Yes.

17 Q And then you sent it back to Nick?

18 A Yes, overnight mail.

19 Q And it's dated June 4th, 1999.

20 Approximately, how many days before that did

21 you first see the initial draft?

22 A Three. It was like a Friday to a

23 Monday.

24 Q Let me go through this with you. The

25 third paragraph tells me what you reviewed.

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1 A Yes.

2 Q And then you say, "Based upon my

3 experience and review of the above

4 information, the following are my opinions."

5 All right, number one, "The sole purpose of

6 licensing examinations is to ensure that a

7 candidate is able to demonstrate a minimum

8 level of competence to practice unsupervised

9 dentistry in a manner that protects the
10 health, safety and welfare of the public."

11 A Yeah.

12 Q What did what you reviewed have to do
13 with that statement?

14 A Okay.

15 MR. HANNA: Objection.

16 THE WITNESS: So I shouldn't have
17 written "based on." It's on my experience,
18 the first part.

19 BY MR. RECKER:

20 Q You could have made that statement a
21 year ago. That's my point.

22 A So, proper English would have been:
23 based upon my experience or review. It's
24 just semantics.

25 Q I'm not into English.

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1 A You wouldn't ask me that question if
2 you weren't.

3 Q Statement number one you could have
4 told me a year ago without seeing anything
5 to do with this case, correct?

6 A Yes.

7 Q In paragraph number two, you indicate,
8 quote, "I am responsible --" let me read it
9 entirely. "As a member of the Ohio State
10 Dental Board, I am responsible for
11 evaluating and determining on behalf of the
12 state of Ohio whether a testing agency's
13 licensing examination is valid and reliable
14 for determining a minimum level of
15 competence. I have evaluated numerous
16 regional and state testing agency
17 examinations during my tenure as an Ohio
18 State Dental Board member including NERB's
19 1995 and 1996 examinations taken by Dr.
20 Baji."

21 Dr. Awadalla, tell me the
22 credentials, the education and training upon
23 which you're qualified to decide, to

- 24 determine whether or not a dental licensure
25 examination is valid and reliable.

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- 1 A My experience as a dentist; my
2 involvement with NERB; my attendance with
3 AADE; by being a member of the ADA which I
4 hold as least important of those. That's
5 what I use.
- 6 Q You've taken no courses in psychometric
7 analysis?
- 8 A Nor do I need to, in my estimation.
- 9 Q You've taken no courses in test
10 measurement?
- 11 A Nor do I need to.
- 12 Q Do you feel that to make a
13 determination as to the validity and
14 reliability of a licensure examination, you
15 need to be familiar with the 1985 APA
16 Standards for Educational and Psychological

17 Testing?

18 A 1985 -- that's old. I'm not familiar

19 with that, no.

20 Q Can you tell me what the term,

21 validity, means as it's contained in the

22 document you reviewed, the 1992 ADA/AADE

23 guidelines?

24 A Validity --

25 MR. HANNA: Objection, but go

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1 ahead.

2 THE WITNESS: Should I answer?

3 MR. HANNA: You can.

4 THE WITNESS: What do I have him

5 for?

6 MR. HANNA: You answer

7 everything. You're doing fine.

8 THE WITNESS: Validity to me

9 means that the content of the exam has
10 something to do with the practice of
11 dentistry today as we see it; in other
12 words, a dental exam should not include
13 questions on trial law. It has to do with
14 the practice of dentistry today.

15 BY MR. RECKER:

16 Q As it relates to determining the
17 validity of a dental licensure examination,
18 does that term have more than one meaning,
19 the term, validity?

20 A The term, validity, is just what it is.
21 It is an exam that examines the scope --
22 some minimum competency is necessary for
23 that profession; so, in other words, it
24 doesn't include other things that are not
25 important, not valid.

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1 Q Does it have any other meaning?

2 A I'm sure it does have a psychometric
3 meaning, but it needs to have a real meaning
4 here. So, I can -- I can look it up. It's
5 in here, but --

6 Q You don't know what it is?

7 A I know what it is, but I can't recite
8 it. Do you want me to find it?

9 Q No, that's okay.

10 A I think the guidelines are guidelines,
11 and I'm not really that impressed with them,
12 to be honest with you. So, I'm not going to
13 use that definition.

14 Q When did you first see these guidelines?

15 A Oh, I've seen them at AADE meetings,
16 and I've also seen them lately when Nick
17 sent them to me.

18 Q Did you ever have your own copy of
19 these guidelines?

20 A Yes, I have it right here. Where is my
21 copy?

22 Q No, before Mr. York sent it to you.

23 A Probably, and threw it out. Okay.

24 Here it is. Let me read it. It sounds so

25 vague. "Validity is defined as the degree

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1 to which a test measures what it was
2 designed to measure." That means absolutely
3 nothing, nothing to the common man. It
4 measures what it measures. You like that
5 better than mine?

6 Q Is there any other --

7 A Well, this is just -- you know, what
8 the heck is "measures what it measures"?
9 It's rhetoric. It measures the practice of
10 dentistry, the significant pieces of the
11 practice of dentistry today, which is
12 different from yesterday.

13 Q On page seven of the guidelines --

14 A All right.

15 Q It says, Section 2, "Test validity."

16 A All right.

17 Q At the bottom of the first paragraph,
18 it says, "They are, one, content validity;
19 two, criterion-related validity; and three,
20 construct validity." Do you know or can you
21 explain the difference between those three
22 types of validity?

23 A I can just read you what it says. I
24 mean --

25 Q You don't know?

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1 A I do know vaguely, but I don't agree
2 with these. I mean, I don't -- I think
3 they're guidelines. I think they're vague,
4 and I think that, as they said here, they're
5 only meant to be guidelines, and they're not
6 really perfected. So, I think they can be
7 challenged.

8 Q In fact, you're doing that; aren't you?

9 A Yeah.

10 Q Would you turn to page one of this

11 document?

12 A All right.

13 Q My question to you is: in your

14 opinion, do the guidelines identify basic

15 testing issues that should be addressed by

16 each dental testing agency such as NERB?

17 A They identify some testing issues that

18 should be reviewed, but it doesn't mean

19 accepted. We've reviewed them, and I don't

20 accept some things.

21 Q In your opinion, do these guidelines

22 delineate dental testing procedures that

23 will comply with professional testing

24 standards?

25 A Can you repeat that?

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1 Q Sure. In your opinion, do these

2 guidelines delineate dental testing

3 procedures that will comply with

4 professional testing standards?

5 A Is that a question? Will it delineate?

6 MR. HANNA: If you don't

7 understand the question, tell him.

8 THE WITNESS: I don't understand

9 it at all. Maybe you can rephrase that

10 question. I have no idea.

11 BY MR. RECKER:

12 Q I'll go on to another question. In

13 your opinion, do these guidelines address

14 crucial aspects of dental licensure

15 examinations that must be addressed by a

16 dental testing agency such as NERB?

17 A No. There are only some issues, and I

18 think they have been addressed. So,

19 anything that's been addressed doesn't need

20 to be addressed again.

21 Q So, are you saying that anything that

22 is not addressed by NERB that's recommended

23 in these guidelines just doesn't need to be

24 addressed by NERB?

25 A No, no. Addressed doesn't mean

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1 accepted. Everything should be addressed.

2 We need to keep an open mind. It doesn't

3 mean we accept them. There are certain

4 things in there that I don't accept as

5 necessary.

6 Q I want to make sure I have the question

7 clear and that you understand it.

8 A Okay.

9 Q In your opinion, do these guidelines

10 address crucial aspects of dental licensure

11 examinations that must be addressed by a

12 dental testing agency such as NERB?

13 A They do include crucial questions, and

14 they should be addressed, and they have been

15 addressed, but they shouldn't all be

16 accepted. In other words, not every, single

17 recommendation is valid and should be

18 accepted. That's my opinion.

19 Q Have you ever looked at any
20 psychometric data related to the NERB
21 written examination?

22 A Yes.

23 Q What?

24 A Every year, a review of the NERB
25 written examination is done by Dr.

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1 Cartwright to the general assembly with
2 attached psychometrics, graphs of failures,
3 what question was failed the most, what
4 question was failed the least, what it was,
5 the changes, et cetera.

6 Q Does it have things, data called KR-20?

7 A I think so.

8 Q Can you tell me from that data what
9 conclusions, if any, you've drawn about the

10 NERB written examination?

11 A That it's a reliable exam, that the
12 more questions you ask, the higher the
13 value, the better; that that can go on ad
14 infinitum; that bad questions are thrown out
15 and good questions are kept. It's a
16 constant evolution.

17 Q What kind of psychometric data do you
18 need to see to determine whether or not an
19 examination is valid and reliable?

20 A I'm not going to pretend to be a
21 psychometrician. When he presents
22 acceptable psychometric data, and I knew
23 that a year or four years ago when we first
24 started --

25 Q How do you know it's acceptable?

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1 A There are figures, numbers, points that
2 are below. For example, if there's only one

3 question, two questions, and people fail
4 half of it, the number is obviously skewed.
5 If there's 100 questions, and there's only
6 one percent failure, you look at that one.
7 I mean, that's basically it. I don't want
8 to go into details because I'm not a
9 psychometrician, but I understand that we
10 have one, so --

11 Q Who's that?

12 A I don't know. I forget his name.

13 Q It's your understanding that NERB has a
14 psychometrician?

15 A (At this time the witness nodded her
16 head.)

17 Q You don't know his name?

18 A Why would I know his name? I can't
19 remember your name half the time. It's not
20 important. And, I feel like they could
21 change it. It doesn't matter as long as we
22 have some input.

23 Q Since you're requiring the NERB
24 examination for purposes of licensure in
25 Ohio, and you are assuming it's a valid and

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1 reliable examination, wouldn't you want a
2 psychometrician, somebody experienced in
3 test analysis to tell you that it's valid
4 and reliable?

5 MR. HANNA: Objection.

6 THE WITNESS: Well, validity is
7 determined by a different thing than
8 reliability, right? They're two different
9 issues. Reliability, I assume, is a
10 mathematical number, and that's what
11 Cartwright presents every year, the
12 reliability of the exam and the validity of
13 the exam.

14 BY MR. RECKER:

15 Q Okay.

16 A You need to ask him.

17 Q No, I'm asking you, because in this

18 document, in this report, you're stating
19 that you have determined that the NERB
20 examination is valid --
21 A To the best of my knowledge.
22 Q -- is valid and reliable. My question
23 to you is: what data or documentation did
24 you utilize as a foundation, as the basis
25 for your opinion that the NERB exam is valid

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1 and reliable?
2 MR. HANNA: Objection. Objection
3 to the form of the question.
4 THE WITNESS: I used
5 presentations done by NERB that it is a
6 reliable exam, that it's a valid exam.
7 There's an Examination Committee that
8 studies that. Just as I get on a plane and
9 assume that the guy knows how to fly it, I
10 don't need the documentation. I do trust

11 NERB, and I'm not a psychometrician.

12 BY MR. RECKER:

13 Q Well, in paragraph two of your

14 statement, Dr. Awadalla --

15 A Yes.

16 Q -- you say, "I am responsible for

17 evaluating and determining whether a testing

18 agency's licensing examination is valid and

19 reliable."

20 A To the best of Eleanore's knowledge.

21 Because she's not a psychometrician, this is

22 to the best of my knowledge. The clinical

23 exam that I participate in is reliable and

24 valid by the definitions I explained to you,

25 and the same goes for the written exam.

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1 MR. HANNA: We've been through

2 this now --

3 THE WITNESS: That is to the best
4 of my knowledge. I can't be all things to
5 all people.

6 MR. HANNA: We've been through
7 this three or four times.

8 THE WITNESS: Neither is --

9 MR. HANNA: You've answered.

10 THE WITNESS: I'm frustrated.

11 BY MR. RECKER:

12 Q The second sentence says, "I have
13 evaluated numerous regional and state
14 testing agency examinations during my tenure
15 as an Ohio State Dental Board member."

16 A AADE meetings --

17 MR. HANNA: Hold on.

18 BY MR. RECKER:

19 Q My question is: tell me the data upon
20 which you evaluated the other testing
21 agencies' examinations.

22 MR. HANNA: I'm going to object.
23 We've just been through this in detail with
24 these excerpts from the minutes. What do
25 you want her to do? Go back and --

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1 THE WITNESS: I attended the
2 meetings. That's really all I've done.
3 There's a very nice explanation of how the
4 exam is given, content, slides, some
5 psychometric analysis, some easy to
6 understand and some very difficult to
7 understand, lots of questions. Outside of
8 actually attending the exam, which is on my
9 agenda, if I'm allowed to attend, that's the
10 only review I have.

11 BY MR. RECKER:

12 Q I'm just trying to understand the basis
13 for your affirmative statement that you have
14 determined that these exams are valid and
15 reliable. I'm trying to get that out, and
16 you're telling me that it's based on what
17 you're being told at NERB which you see in
18 the form of some data, and your conclusion

19 is that it's valid and reliable.

20 MR. HANNA: Objection. That's
21 not what she said. We've been here for
22 three hours now, and she's been through a
23 number of things.

24 MR. RECKER: Rob, and this is
25 extremely critical.

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1 BY MR. RECKER:

2 Q Doctor, is it your belief that your
3 report here is an expert report, an expert
4 opinion?

5 A As much as an expert can be in this
6 case, yes.

7 Q Do you feel like you are an expert in
8 determining validity and reliability of
9 dental licensure examinations?

10 A Barring not being a psychometrician,

11 yes. Who else can do it?

12 Q I need to know exactly how you arrived

13 at your conclusions that this is a valid and

14 reliable exam.

15 A Experience, one; two, being a member of

16 NERB; three, it says reliable and valid, as

17 I can understand with the intelligence of a

18 dentist, this is -- I understand how they

19 reach reliability, and I understand how they

20 reach validity. I participate in the exam.

21 I understand how it is run, and I understand

22 it's within my power as a board member to

23 make that decision.

24 Q Tell me --

25 A As it was yours to have an Ohio-only

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1 exam.

2 Q Tell me what data or evidence you have

3 reviewed which supports the proposition that

4 the NERB clinical examination is a reliable
5 examination.

6 A Reliability to me means that examiners
7 examining a certain, like I said, window of
8 preparations, restorations, periodontal
9 treatment, are graded similarly by two
10 examiners. For example, if two different
11 examiners at four different times in four
12 different locations as in the plaintiff's
13 case found somebody not to be competent,
14 that tells me it's a very reliable exam.
15 That's what reliability means.

16 Q To you.

17 A To me. It's just an example.

18 Q On page ten of the guidelines, the
19 first sentence under "Test Reliability" is
20 the heading, "In addition to establishing
21 test validity, an agency must also
22 demonstrate that the test is reliable." That
23 goes through definitions of what's meant by
24 that. Tell me what evidence or data you
25 have personally reviewed which demonstrates

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1 that the NERB examination is reliable.

2 MR. HANNA: Objection. Asked and
3 answered now for the fourth time.

4 THE WITNESS: Is this supposed to
5 be the god of testing? It's the 1992
6 guidelines to something that I don't even
7 know is valid or not itself. So, I don't
8 really care.

9 MR. HANNA: After this question,
10 after you've answered the question, and
11 let's take a five-minute break. I sense
12 frustration on both sides here.

13 BY MR. RECKER:

14 Q Can you tell me what is meant by
15 inter-rater reliability?

16 A Sorry?

17 Q Can you tell me what is meant by
18 inter-rater reliability?

19 A Inter-rater reliability means the
20 degree to which two examiners agree on what
21 they see.

22 Q NERB has approximately 350 examiners,
23 correct?

24 A Yes.

25 Q Each one is subjectively applying

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1 certain criteria in making assessments,
2 correct?

3 A Each examiner is following criteria and
4 making decisions based on those criteria.

5 Q Have you seen any evidence from NERB,
6 any data which tells you how all of these
7 examiners compare in their scoring?

8 A Of a certain exam?

9 Q Any exam, any procedure, anything.

10 A I don't really know what benefit that
11 would be. No, I don't understand the

12 benefits of that.

13 MR. HANNA: Can we take five
14 minutes?

15 MR. RECKER: Sure.

16 (At this time a short recess was
17 had.)

18 BY MR. RECKER:

19 Q Dr. Awadalla, in your opinion, do the
20 NERB calibration procedures comport with the
21 calibration methodology described on page 12
22 of the guidelines?

23 A To the best of my knowledge, yes.

24 Q Have you seen any empirically
25 established inter-rater reliability data?

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1 A Data, no. We assume that all examiners
2 disagree, and that's why the calibration is
3 so critical, as we walk in through these

4 doors, to get everybody to look and see the
5 same things and give the same grades. So,
6 we assume no one agrees, and we take it from
7 that point forward, and that's why I
8 mentioned before that I don't think that it
9 matters what inter-rater reliability is.

10 Q In paragraph three, you say -- I'm
11 sorry. We're back to your report.

12 A No problem.

13 Q You say, "In 1995 and 1996, NERB was an
14 approved testing agency for dental licensing
15 in the state of Ohio, meaning that its
16 testing criteria, scoring and grading
17 methods, examiner selection and calibration
18 processes and overall validity and
19 reliability were evaluated and approved by
20 the Ohio State Dental Board." Can you tell
21 me where I can find that evaluation and
22 approval by the Dental Board?

23 A In what form would you like it to be?

24 Q In what form does it exist?

25 A We could go through the '95 and '96

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1 minutes. At NERB there is always a
2 discussion. It's always not a concern but a
3 constant, evolving process that we discuss
4 when we go away in March and come back and
5 decide that that's the exam we still
6 support.

7 Q Let me direct your attention to certain
8 phrases in paragraph three. It says, "and
9 overall validity and reliability were
10 evaluated and approved by the Ohio State
11 Dental Board," line three.

12 A Do you remember me talking to you about
13 Cartwright and the discussion of those two
14 issues?

15 Q At a NERB meeting?

16 A At all NERB meetings every March to the
17 general assembly. At that time we either
18 agree with the guy or we don't, and to the
19 best of our knowledge, we like what we hear.

20 We think it's a valid and reliable exam, to
21 the best of my knowledge.
22 Q So, when you say "overall validity and
23 reliability were evaluated and approved by
24 the Ohio State Dental Board," what you then
25 mean, as I understand it, is that the board

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1 as a group listens to NERB's presentation
2 and then concludes it's a valid and reliable
3 exam.

4 A Only because we agree with it. If we
5 didn't agree with it, then, we'd move to not
6 use NERB as our testing agency.

7 Q Do you have any report that the Dental
8 Board compiled upon which it made this
9 decision?

10 A It would probably be copies of the
11 graphs and the findings that Cartwright had.

12 Q Have you seen --

13 A Do we conduct studies on our own? No,

14 we do not conduct studies.

15 Q Have you seen any reliability evidence

16 from NERB related to the clinical

17 examinations?

18 A We assume reliability of what, the

19 test? You mean, do I have --

20 Q Do you understand what the question is?

21 A No, I don't know what you mean.

22 Q Have you seen any evidence from NERB at

23 any of these presentations relating to the

24 reliability of the NERB clinical

25 examination?

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1 A I'm not sure. I'd have to think about

2 that. I don't know. I don't know.

3 Q Wouldn't it be important for you as a

4 Board member to know whether or not the NERB

5 clinical examination was reliable?
6 A Yes, but you didn't hear me the first
7 time when I said the calibration process is,
8 in my eyes -- we're talking about a clinical
9 exam. We're not talking about an A, B, C, D
10 with one correct answer. Reliability in a
11 clinical exam is extremely focused on the
12 calibration process which we're all a part
13 of. I'm very satisfied with the extent of
14 the calibration process and what we go
15 through to see the same dot on the same I,
16 to understand what acceptable is. I'm very
17 satisfied with the criteria and how detailed
18 they are so that we can make these decisions
19 using very little of our brain and just
20 looking at something and recognizing: does
21 it fall in the zero, one, C, O, R, or E?
22 I'm very comfortable with that.

23 If I saw a graph to help me see
24 that and didn't see the calibration process,
25 I wouldn't be comfortable. A graph means

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1 nothing to me. Being present at a fair and
2 unbiased and blind exam means something to
3 me, and that's why I say it's reliable.

4 Q As I understand your testimony, the
5 calibration process to you has everything to
6 do with reliability.

7 A It has a lot to do with it, yes.

8 Q Isn't whether or not -- let me strike
9 that.

10 Isn't it true that the only way
11 you can tell whether or not there has been
12 effective calibration and standardization of
13 the examiners, isn't the only way you can
14 tell that through assessing post-examination
15 data --

16 A No, no.

17 Q -- relating to examiner profiles?

18 A No. That's something this report says.

19 Who are these people? I think we're missing

20 the point. This is a clinical exam. This
21 is clearly different than an A, B, C, D
22 exam. This is a clinical exam. There is a
23 window of acceptability. The important
24 thing about calibrating examiners is to make
25 sure that they're walking through the same

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1 window of acceptability. That's what it
2 means to me. That's why it's so important
3 to do something before the exam and assume
4 we have no agreement, rather than post. How
5 does that help the student? Who cares? We
6 assume everybody doesn't agree. We start
7 over every year. We calibrate and calibrate
8 and calibrate.

9 Q Do you agree that test reliability is a
10 function of how consistently the examiners
11 grade on a test?

12 A Yes.

13 Q How, therefore, can you ascertain test
14 reliability without collecting data as to
15 how each examiner graded on each procedure
16 on each test?
17 A You do it by following the criteria.
18 The fact that -- the best way to check test
19 reliability is to do it on a computer.
20 That's the only way you'll convince me these
21 people see the same thing. They're truly
22 one thing that you can see again and again
23 and again, and exactly look at the angles,
24 exactly look at the picture. Other than
25 that, who's right and who's wrong? I just

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1 don't see the value in it. You're making a
2 diagnosis. You're having the same
3 treatment. It doesn't make any difference.
4 So, why do it?

5 Q In paragraph three of your opinion,
6 we've talked about the approval by the Ohio
7 State Dental Board. Could I take it from
8 your testimony that this was not done at a
9 formal board meeting where they have
10 actually reviewed data during a meeting and
11 voted to approve the validity and
12 reliability of the NERB exam?

13 A I wasn't there before '95, so I don't
14 know.

15 Q At least in your tenure, has that ever
16 been done?

17 A That we review the exam and decide that
18 it's a good exam?

19 MR. HANNA: Objection. Asked and
20 answered.

21 BY MR. RECKER:

22 Q At a formal board meeting, the board
23 votes: based on our review of A, B and C,
24 we have determined the NERB exam is reliable
25 and valid. Motion made, seconded and

1 passed.

2 A By my understanding, it's not
3 necessary. We don't do it because it's not
4 necessary, but we do discuss it.

5 Q In paragraph seven of your report, you
6 talk about, "It is my opinion that in 1995
7 and 1996, NERB's 'double blind anonymous'
8 grading method and independent (three
9 examiners) scoring validation requirements."
10 I understand it's independent when you walk
11 over and make your assessments.

12 A Yes.

13 Q Nobody is with you.

14 A Yes.

15 Q It's independent when examiner two
16 walks over and makes his assessments.

17 A Right.

18 Q The independence stops when validation
19 begins; isn't that correct?

20 A No, because --

21 Q As soon as you start talking to another
22 examiner about the grades you've both given,
23 the grading is no longer independent.
24 A Well, you've already done it. It's
25 done; it's over.

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1 Q It's not over. You have to agree.
2 A You have to go through the criteria and
3 decide who's right and who's not.
4 Q Correct.
5 A That's what the validating examiner
6 does or that the discussion at that time
7 would ensure, but when you say
8 "independent," it's like checking your
9 answers after the test. It doesn't mean you
10 cheated. You check your answers after the
11 test. So what? You've already put it down.
12 You've put the answer down.

13 Q Are you aware of any regional boards
14 where the clinical examiners do not talk to
15 each other, where they don't know what the
16 other person graded, ever?

17 A I believe the Western, perhaps, just
18 takes an average, I believe, yeah. I think
19 it's the Western. One has a pamphlet. They
20 go back and forth. One averages. I don't
21 know. They all have different ways.

22 Q And in paragraph eight, your opinion
23 that both the written and clinical portions
24 of the exam were both valid and reliable,
25 again, that's based upon what you've already

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1 talked about, data presented by NERB at
2 their presentation where Cartwright gives
3 the slides, et cetera, et cetera; is that
4 correct?

5 A Uh-huh.

6 Q Don't you feel like you are really
7 relying an awful lot on NERB, on what
8 they're telling you?

9 A I'm present at the exam. I see what
10 we're examining. I know that a Class II
11 amalgam is a part of the exam. I know how
12 we got to that. I understand the Class III.
13 I understand the provisional restoration,
14 the endo. You're making it sound
15 simplistic. It's not.

16 Q How do you know --

17 MR. HANNA: Can you let her
18 finish?

19 BY MR. RECKER:

20 Q How do you know that every one of the
21 other 350 examiners sees it the way you do
22 and grades it the way you do?

23 A Are we talking about the clinical exam?

24 Q Correct.

25 A Because of the calibration process.

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1 You can't -- there is no humanly possible
2 way for any exam on any planet -- you can't
3 ask that question of anyone and get a yes.
4 It's not possible because we're still human
5 beings. When we go to a computer, and the
6 kids can prep on the computer, and it can
7 scan exactly how far off median it is, how
8 wide is the isthmus exactly, and scores
9 them, that's the next time you can ask that
10 question and get the right answer.
11 I don't think any psychometrician
12 out there can say differently. We're
13 talking about the human eye with its
14 possibility of error. The most you can do
15 is retrain that human eye over and over and
16 over again, and that's what NERB does, and
17 that's what I like. I assume no one agrees.
18 I assume everybody doesn't know. We start
19 over in March. We do it again after the
20 meeting. We use slides. We use tests. We

21 do it again the day before. It doesn't
22 matter. It's repeatedly looking at it and
23 familiarizing yourself with the criteria.
24 When I see this, it will be that.
25 Q How do you know after all this

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1 calibration that everybody is seeing things
2 the same way?
3 A Well, that's a very good point. So,
4 let's say I have a stroke between my
5 calibration and the time I examine. I
6 always have a second person. That's why
7 one-person exams are completely unfair. A
8 second person comes, and then a different
9 second person follows me the third time and
10 notices: Eleanore's not writing right.
11 She's putting ones. She had a stroke. The
12 validator or captain comes and says: what's

13 up? We need help. That's why to me this is
14 a reliable exam. It's not one eye. It's
15 not a computer, but it's the second best
16 thing that I can see.

17 Q In paragraph nine of your report, why
18 did you feel the need to go from testing
19 procedures and validity and reliability to
20 all of a sudden talking about dental
21 overhead?

22 A There's something I read in there about
23 dental overhead. I didn't know why it was
24 there, to be honest to you. I thought I'd
25 comment. It seemed a little excessive to

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1 me, but --

2 Q Paragraph nine, who wrote that?

3 A I did.

4 Q Who asked you to write it?

5 A Well, I asked why that -- where is that

6 thing that talks about income loss and blah,
7 blah, blah? I mean, why is that included in
8 any discussion?

9 Q Well, I just need to know --

10 A That's why I made that comment.

11 Q Based on something you read in the
12 exhibits that you've already identified?

13 A Yeah. It had to do with Dr. Baji's
14 dollars and cents, his receipts, so I
15 thought I'd comment, and Nick said it was
16 okay to comment.

17 Q Dr. Awadalla, isn't it a fact that Mr.
18 York drafted this because he told you he
19 needed it to respond to something the
20 plaintiff said?

21 A I would expect, if he drafted it,
22 better English would have been used, to be
23 honest with you.

24 Q You're telling me this was your own
25 idea to put paragraph nine in there?

1 A Well, I wanted to know why that was in
2 there. I'm not an idiot. Why is that in
3 there? He said: because there's some sort
4 of compensation necessary. I said: I
5 disagree. Well, what do you think fair
6 compensation is?

7 Q Tell me the basis upon which you've
8 concluded, in the last sentence, "Overhead
9 expenses commonly consume at least 60 to 80
10 percent of gross receipts for a start-up
11 practice."

12 A That was me. I'm looking at "Dental
13 Economics" as a guide. For the best
14 practice, it said 60. The worst can be 90
15 and 95. I've seen that. \$2 million
16 practices take home \$30,000. I think it was
17 in a "Dental Economics" issue, a throw-away
18 newspaper. I could find it if you want.

19 Q That's my question. Upon what did you
20 base this last sentence?

21 A "Dental Economics" surveys for

22 dentists, the "Dental Economics" magazine,
23 are you familiar with it?
24 Q This report states that your opinions
25 are based upon these documents, which does

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1 not include "Dental Economics," and your
2 experience.

3 A Well, when I reviewed -- that goes to
4 experience. It's my experience.

5 Q Your own personal experience?

6 A Yeah. I mean, my practice was at 80
7 percent for many years.

8 Q So, your opinion is based upon a sample
9 of your own personal experience.

10 MR. HANNA: Objection.

11 THE WITNESS: And reading, being
12 an intelligent human being and processing
13 information. That's how we get where we

14 get, processing information.

15 BY MR. RECKER:

16 Q I can't challenge the information if I

17 don't have the articles upon which you based

18 your opinion.

19 MR. HANNA: She's given you a

20 publication.

21 MR. RECKER: I'm sorry.

22 BY MR. RECKER:

23 Q What was the publication?

24 A "Dental Economics." I could probably

25 find an issue, because there's articles

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1 every year about income of dentists and

2 overhead, and what percentage of overhead

3 expenses are. I mean --

4 Q So, based upon your own experience with

5 your dental practice --

6 A And reading and processing information.

7 It appears that the general overhead of
8 dentists is 60 to 80 percent. Did I go out
9 and do a survey and validate it? No, I just
10 trusted what I read.

11 Q Do you know what is meant by "standard
12 errors of measurement"?

13 A "Standard errors of measurement"? I
14 couldn't give you a clear definition.

15 Q Do you feel that content validity is
16 more important or less important in
17 licensure exams than criteria validity or
18 construct validity?

19 A I told you before I'm not really clear.
20 I think content is certainly important. As
21 to the distinction between the three --

22 Q If a candidate fails the NERB exam, is
23 that candidate given his subscores?

24 A From NERB?

25 Q Correct.

1 A Subscores? What's a subscore?

2 Q If you don't know --

3 A No, I don't know.

4 Q Can you define what's meant by

5 intra-rater reliability, I-N-T-R-A-rater

6 reliability?

7 A Versus inter-rater?

8 Q Correct.

9 A Reliability from one day to the next of

10 the same person.

11 Q Let me hand you what we will mark as --

12 are these exhibits marked already? That's

13 the stuff you brought.

14 (At this time Plaintiff's Exhibit

15 6 was marked for identification purposes.)

16 BY MR. RECKER:

17 Q Handing you what's been marked Awadalla

18 6, according to your statement, Dr.

19 Awadalla, you reviewed this document.

20 A Uh-huh, yeah.

21 Q And it would appear that Dr. Shapiro

22 reviewed more material than you did when you
23 formed your opinion.

24 MR. HANNA: Objection.

25 BY MR. RECKER:

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1 Q Did you review the deposition of Dr.

2 Hall?

3 A No.

4 Q Mr. Zeder?

5 A No.

6 Q "psi Final Report to the state of

7 California Board of Dental Examiners, July,

8 1997"?

9 A That I looked at awhile ago but not

10 recently. That was part of the board

11 meeting.

12 Q Do you recall what that report

13 concluded relative to the NERB written exam?

14 Let me be more specific; relative to the

15 reliability of the NERB written exam.

16 A I need to read it again. I'm not going

17 to comment.

18 Q You don't recall?

19 A No, but I have looked at it.

20 Q In paragraph three of Dr. Shapiro's

21 report, "It is my professional opinion that

22 the Northeast Regional Board of Dental

23 Examiners has failed to maintain the

24 documentation necessary for demonstrating

25 the validity of its examinations as required

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1 by both psychometric standards and the

2 standards of the dental profession."

3 It's my understanding you disagree

4 with that.

5 A Totally, yup.

6 Q Paragraph four, "It is my professional

7 opinion that the reliability of the didactic
8 portions of the NERB examination have been
9 shown to be markedly deficient." Do you
10 disagree with that?

11 A How did he come up with that? I don't
12 know how he came up with that. Are we
13 talking about the written simulated?

14 Q "Reliability of the didactic portions"
15 is what it says.

16 A You'll have to define "didactic."

17 Q Do you understand what "didactic"
18 means?

19 A I am assuming he's talking about the
20 NERB written.

21 Q Do you know how "didactic" is defined
22 in the 1992 guidelines?

23 A Why don't you tell me.

24 Q Without looking, do you know?

25 A No. I didn't memorize the document.

TACKLA & ASSOCIATES

1 Q Okay. Paragraph five, "It is my
2 professional opinion that NERB has grossly
3 inadequate procedures for either achieving
4 or documenting reliability in the clinical
5 portions of the examination."

6 A Disagree.

7 Q All right.

8 A I just explained it to you. I don't
9 care about the documentation post. We have
10 plenty of calibration to try and drive this
11 human eye through the same hole.

12 Q How can you disagree that there's
13 grossly inadequate procedures for
14 documenting reliability in the clinical
15 portions when you say it isn't important?

16 A It is not important. Post -- this is
17 the portion that talks about inter-rater
18 reliability after the exam.

19 Q Right.

20 A What difference does it make?

21 Q That's not my question. My question
22 is: do you disagree with his statement?

23 A Yeah, I do, because he's relying on
24 this inter-rater reliability after the exam
25 which really doesn't do anything.

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1 Q No. He's saying that NERB --
2 A Yeah.
3 Q -- has grossly inadequate procedures
4 for either achieving or documenting
5 reliability in the clinical portions of the
6 examination. I don't hear you disagreeing
7 with that. I hear you saying it's not
8 important.
9 A I disagree with that. I said I
10 disagree with that.
11 MR. HANNA: Can I get an
12 objection in here? Let me just say I'm
13 objecting to the characterization and the
14 form of the question. Go ahead.

15 BY MR. RECKER:

16 Q Why do you disagree with his statement?

17 A Because we achieve reliability by

18 making sure we have lots of pre-exam

19 training to try and get everyone to see the

20 same thing at the same time in the same way.

21 That is reliability.

22 We also have a third unbiased

23 examiner as well. We have one, two and

24 possibly three examiners to make sure that,

25 if inter-rater disagreement occurs, that

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1 there's another spare examiner that agrees

2 with one or the other.

3 Q Do you know whether or not the other

4 regional boards compile post-examination

5 profiling of examiners' grading?

6 A Some do, yes. Yes, I know they do.

7 Q Do you know which ones do and which

8 ones don't?

9 A I think SRTA does. They might all; I

10 don't know.

11 Q Do you know why they do that?

12 A Probably so that they can answer

13 questions and look better, but it really --

14 really, it's kind of like giving someone a

15 drug regardless of the diagnosis. Why do

16 the test if the answer is always the same?

17 I'm sure NERB will do that in the future,

18 but I still don't see the value added. No

19 value added. We assume no one agrees. We

20 train them as if they don't agree. To me

21 that's a better way of approaching that than

22 coming back later and saying: oh, they

23 don't agree. It's better to assume they

24 don't agree and train them as diligently as

25 possible.

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1 Q In your opinion, what effect, if any,
2 does the pass/fail rate have on inter-rater
3 reliability? Let me rephrase it. What
4 effect, if any, does inter-rater reliability
5 have on the pass/fail rate?

6 A I think with a third validating
7 examiner, it does not.

8 Q No effect?

9 A In the end, the kid gets a fair shake
10 because there's a third examiner. When the
11 two don't agree, as it should be, to either
12 clarify why one of them is wrong or to
13 intervene, that to me is critical.

14 Q As you describe what you believe is
15 appropriate, why do you need calibration at
16 all?

17 A Because to remind the examiners again:
18 this is not as simple as it looks because
19 there's criteria that one must go by, and to
20 remind your naked eye that what you do all
21 week is not what we're here for. We're here
22 for minimum competency. This is what it can

23 look like, and it can still pass. It's a
24 constant training exercise to get examiners
25 to familiarize themselves with what is

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1 minimum competency. So, it's critical.
2 Calibration is critical, to look at
3 something and have everyone say: A, A, A,
4 B, B, B, over and over again, so that --
5 Q How do you know whether or not they do
6 that?
7 A Because I'm present. They do it.
8 Q At one place with one group of
9 dentists.
10 A At different places with different
11 groups of dentists, yes.
12 Q You're never present at all sites
13 simultaneously.
14 A No, but I can't believe there's a
15 subversive plot to only make mine look good.

16 There would be no reason for that.
17 Different board members are also present at
18 different calibrations.
19 Q What data did you collect after your
20 calibration exercise?
21 A Well, the first part of calibration is
22 the general assembly, slides, slides,
23 slides, okay. The second part is to break
24 up into small groups and go through an exam.
25 At the end of that training period, you take

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1 an exam. We go over the exam together. The
2 captain goes over each question. The exam
3 is graded at the end.
4 Every question that's missed is
5 gone over: why did we miss it? Go over the
6 criteria again. Retake the exam if you
7 don't score 80, a different exam. It's

8 generally anywhere between a two to
9 four-hour period. I've been there for four
10 hours. When you're done you hopefully have
11 a general understanding of what the exam
12 requirements are.

13 Q Is any of this data, then, compiled,
14 the test results from all of the exercises
15 taken by all of the examiners around the
16 country?

17 A No, they're not.

18 Q Why?

19 A Well, I think because, again, what
20 purpose would it serve? If we are here to
21 take the exam over and over and over again
22 to make sure that you at least get 80
23 percent, it would look like Awadalla 80,
24 Demkee, 90, you know, because you could show
25 the first, second and third time, but,

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1 again, as long as we understand what we're
2 here for, and we're trained properly, what
3 is the purpose of that except to give you a
4 graph that we can argue about?

5 Q So, you don't see any psychometric
6 purpose in that kind of data?

7 MR. HANNA: Objection.

8 THE WITNESS: I think it's a
9 lovely thing, but tell me where it helps
10 that student. It's post facto. You have to
11 wait another year and retrain everyone
12 again. We're doing it already, okay?

13 BY MR. RECKER:

14 Q When you leave your calibration
15 session, you're confident that everybody is
16 on the same page as it relates to looking at
17 something and applying the same criteria?

18 A To the best of the knowledge of the
19 human eye, but it's not enough. We still
20 come back the day before and go over it
21 again.

22 Q And then you leave that calibration
23 exercise feeling comfortable --

24 A Right.

25 Q -- that everybody is seeing and calling

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1 things in the same way.

2 A Right, but that's not all. Then we go

3 to the exam, and as captain, I would then

4 check and make sure that that's really

5 happening by looking at the score sheets, by

6 intervening as a validator, by taking this

7 little book and making sure that they're

8 really following the guidelines.

9 Q On the one grading sheet that you

10 reviewed, it wasn't happening very

11 frequently; was it?

12 A I need more than one to say the word,

13 frequently. It happened, but it didn't

14 happen the way we wanted it to. I think

15 that was -- the validator did it.

16 Q Without evidence of every candidate's
17 grade by every examiner at every site, how
18 do you know it's not happening frequently?

19 A I just said I just reviewed this. I
20 don't --

21 Q My question, Dr. Awadalla, is: I know
22 you've only reviewed one grading form for
23 the spring of 1995, the amalgam preparation
24 for Dr. Baji, and we have disparity between
25 the examiners. My question is: how do you

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1 know disparities like that aren't going on
2 everywhere amongst 350 examiners unless you
3 have post profiling data to look at?

4 MR. HANNA: Objection.

5 THE WITNESS: And what are you
6 going to do with it? Let's assume it
7 happens every day, every hour with every
8 person. What do you do? You recalibrate.

9 That's exactly what we're doing. I go back
10 to, if the answer is always the same, don't
11 ask the question. The answer is always the
12 same. You always calibrate. You always try
13 to get people on the same page. Luckily for
14 that candidate, there's always a third
15 person. Ten, 15 years ago, it was hung on
16 one hat. You made it, or you didn't. This
17 is a fair exam.

18 BY MR. RECKER:

19 Q Is it your opinion that every examiner
20 can be properly calibrated?

21 A I have to assume they all have minimum
22 intelligence, and they can be, yes.

23 Q Without any post-examination profiling
24 data, you wouldn't know whether or not some
25 cannot be calibrated; isn't that true?

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1 A Cannot be calibrated?

2 MR. HANNA: Objection.

3 THE WITNESS: In other words --

4 BY MR. RECKER:

5 Q The data might show that several

6 examiners are way off the line when it comes

7 to profiling amongst all of the examiners.

8 A Uh-huh.

9 Q And, therefore, adjustments might be

10 made in the scores that they gave.

11 A Without data, that happens already.

12 When we evaluate examiners, if an examiner

13 consistently graded incorrectly throughout

14 the day, I would write that examiner up, and

15 I have, and they go before a committee to be

16 questioned and watched. So, it's already

17 happening without the graph. It's

18 happening. It does happen.

19 Q When you're captain, it happens?

20 A When any captain is captain, it

21 happens. We all evaluate our examiners, as

22 well as the chief. It's part of the

23 protocol.

24 Q The two examiners that graded Dr. Baji
25 on the one exhibit, somebody wasn't

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1 following the criteria. Did they get
2 written up? Should they be written up?
3 A If I had a brand new examiner that
4 wasn't sure, and for the first couple of
5 people, I followed along, by the end of the
6 exam, by the end of the day, if they're not
7 doing better, yeah, I would. However, if
8 you're not sure, and you need to remind
9 yourself, that's why the first ten people
10 take forever because you're always looking
11 in the book. I think that you can get
12 better with time, that if I was to examine
13 tomorrow without looking at the criteria I'd
14 be different than if I was calibrated. It's
15 just a matter of a constant reminder, a
16 check and balance. You've got three people

17 that decide somebody's fate, and that's a
18 fair way of going about it.
19 Q And in your opinion, that way of going
20 about it comports with the applicable
21 standards for dental licensure examinations?
22 A Clinical, yes.
23 Q Let me hand you Exhibit 7.
24 (At this time Plaintiff's Exhibit
25 7 was marked for identification purposes.)

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1 BY MR. RECKER:
2 Q You've reviewed this statement also?
3 A Yes, yes, yes.
4 Q Statement A, do you disagree with that?
5 A Yes.
6 Q Which part?
7 A Are we talking about A?
8 Q Yes.

9 A "NERB fails to objectively demonstrate
10 that graders for its clinical patient and
11 manikin examinations are calibrated to
12 comport with the standards --" I mean, are
13 there standards? I thought they were just
14 guidelines. To comport with the guidelines?

15 Q It says standards of the dental
16 licensing testing community. Do you know
17 what those standards are?

18 A I assume it's this.

19 Q You're pointing to the 1992 guidelines.

20 A Yeah. No?

21 Q I'm asking you: do you consider those

22 --

23 MR. HANNA: What are you

24 referring to?

25 BY MR. RECKER:

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1 Q I'm asking you if you consider the 1992

2 guidelines as standards for the dental

3 licensing testing community?

4 A No, I do not.

5 Q What are the standards for the dental

6 licensing testing community?

7 A I'm not sure I know.

8 Q You don't know what they are?

9 A No. I can guess what they are, but I

10 don't know exactly what they are, and I

11 disagree with A.

12 Q If you don't know what the standards

13 are that Dr. Courts is applying, how can you

14 disagree with his statements?

15 MR. HANNA: That's a different

16 question.

17 THE WITNESS: Yes. I'm assuming

18 they're this. I'm assuming he's talking

19 about this document here.

20 BY MR. RECKER:

21 Q The 1992 guidelines?

22 A Yeah.

23 Q Which you don't think are standards.

24 A No, I think -- the word, guidelines, is

25 a different word than "standard." It's a

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1 guideline. It's a thought process. It's
2 what we think they should be, "we" meaning
3 the ADA and AADE, who are not authorities on
4 tests. No, I look at them as guidelines.

5 Q Who do you consider authorities on
6 tests?

7 A Not an organization that supports
8 dentists in the dental community. I mean,
9 why would they know anything about testing?

10 Q The AADE, the American Association of
11 Dental Examiners?

12 A It's a group of examiners. It's all of
13 us. I'm no expert.

14 Q Who do you consider to be an expert in
15 dental testing?

16 A On dental testing, I don't think we

17 have any experts on dental testing. On
18 clinical exams, no. We will when they're
19 computer simulated.

20 Q Doesn't it take --

21 A When a kid sits down to prep a tooth on
22 a computer, we'll have standards, but until
23 then --

24 Q So, it's your opinion that there are no
25 standards that are applicable?

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1 A No, there are guidelines; there are
2 guidelines, as the document states, and
3 they're being improved every day, but
4 they're guidelines.

5 Q Do you think companies like ETS and SAT
6 have certain standards of testing that they
7 have to adhere to?

8 A They're a written exam, yes. It's an
9 easier exam to have standards for, yes.

10 Q What are the standards --

11 A There's one right answer. There is no
12 one right answer here. There's a window of
13 right answers. That's the difference
14 between a clinical exam and a didactic exam.

15 Q So, with the clinical examination in
16 dentistry with NERB as you know it, there
17 are no standards against which you have to
18 compare?

19 A There are general standards. That's
20 not what I said. There are general
21 standards.

22 Q What are they?

23 A But the exam needs to include valid
24 dental practices today.

25 Q The standards are reliability and

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1 validity.

2 A Right.

3 Q Is that the end of your sentence, or

4 was there something more?

5 A That was the end.

6 Q The standards are reliability and

7 validity, but you, sitting here right now,

8 don't know personally how to ascertain

9 reliability and validity in dental licensure

10 examinations?

11 A I do.

12 MR. HANNA: Objection.

13 THE WITNESS: I know something

14 about it. We've gone over it a thousand

15 times. Reliability, two examiners plus a

16 third examiner, calibration. Do you want me

17 to go over it again? It's the same thing,

18 over and over again. Validity, the content

19 of the exam. It doesn't have something to

20 do with law. It has to do with

21 preparations, with endodontics, with the

22 things that dentists practice every day.

23 That's the standard. That's what NERB's

24 standards are.

25 BY MR. RECKER:

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1 Q In your opinion, can you have a valid

2 examination if it's not reliable?

3 A Yes, you can. The validity part of the

4 exam is that it contains the right amount of

5 clinical dentistry that demonstrates what

6 practitioners are practicing today and what

7 the kid learned in school. That's validity.

8 If a blind examiner examines those kids on a

9 valid exam, it's a valid exam, but if he

10 can't see, it's not reliable. So, yes, you

11 can have a valid exam that's not reliable.

12 Q Paragraph B of Dr. Court's statement, I

13 assume you disagree with that also?

14 A For all of the reasons I told you why a

15 post-examination analysis does not change

16 the outcome.

17 Q Your opinion is that a post-examination

18 analysis is meaningless?
19 A It's meaningful if you want to look at
20 numbers, but if the numbers don't impact
21 what you're going to do, I go back to, if
22 the treatment is the same, why do the test?
23 The treatment is always the same. We go
24 back to calibrate no matter what. If I've
25 got no one agreeing, or if I've got

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1 everybody agreeing, I'm going to calibrate,
2 so what difference does it make?
3 Q Paragraph D, would you agree with that
4 statement, at least as it relates to the one
5 grading form that you looked at?
6 A I clearly understand that if four
7 different teams of examiners, eight people
8 in four different locations find an
9 individual not to have minimum competency,

10 you've got to say that it says something
11 about the reliability of the exam, that it's
12 extremely reliable. So, no, I don't agree
13 for that reason.

14 Q So, in other words, if a blind examiner
15 failed somebody four times, that would be
16 proof of reliability of the exam?

17 A No, because we've got eight different
18 people in four different locations. What's
19 the probability that eight different people
20 in four different locations are going to
21 think somebody is not competent to pass an
22 exam? Pretty rare, huh?

23 Q I don't know. Have you seen any
24 statistics?

25 A I'm assuming that that wouldn't happen,

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1 and it did in this case, which tells me this
2 individual is not competent in that one

3 area. That's what it means to me.

4 Q Paragraph D, were scoring protocols
5 followed on the one clinical grading sheet
6 you reviewed?

7 A Say that again.

8 Q I realize you can't comment on multiple
9 instances because you've reviewed only one
10 form, but on the one form, weren't there
11 errors in how the grading was supposed to
12 occur?

13 MR. HANNA: Objection.

14 THE WITNESS: I wasn't there.
15 It's difficult to say: did someone just not
16 fill something out, or did they really not
17 see it? I don't know. So, I would have
18 liked to see a better grading sheet, but it
19 was validated, and that's what's key for me.

20 BY MR. RECKER:

21 Q How do you know it was validated?

22 A Because of the third column; that's the
23 validating column.

24 Q Do you know Dr. Courts?

25 A Personally, no.

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1 Q Do you have any reason to believe that
2 his opinions wouldn't be objective?

3 A I don't -- why make that judgment? I
4 don't know. I don't agree with him, so --

5 Q Other than that, do you have any
6 independent knowledge or any independent
7 basis for believing that his opinions
8 wouldn't be objective?

9 A As I said, I don't agree with him, so I
10 don't know. I don't know how he came up
11 with these conclusions, except he's never
12 participated in the exam. I mean, it's
13 obvious.

14 Q How is it obvious?

15 A Because if he attended the exam and
16 looked at what we do, he wouldn't come up
17 with these conclusions. I mean, it's a

18 different exam on paper than when you're
19 present. I don't think he's read the
20 criteria. I don't know if he understands
21 the criteria. I don't know. And, he was
22 paid, a little suspicious. I'd say what you
23 want me to say if I was paid too. Remember
24 that for future reference. I didn't even
25 see that.

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1 MR. HANNA: I hope you noted
2 laughter on the transcript.

3 THE WITNESS: Joke, joke, joke.
4 God, there's no levity in the court. I can
5 see that.

6 BY MR. RECKER:

7 Q Tell me in your opinion, for which
8 you're here today, your opinion; tell me,
9 what is the minimal psychometric data that
10 you believe is necessary upon which to

11 formulate opinions regarding validity and
12 reliability?

13 MR. HANNA: Objection. Objection
14 to the form of the question.

15 THE WITNESS: I --

16 BY MR. RECKER:

17 Q Minimum kinds and types of psychometric
18 data is what I'm referring to.

19 MR. HANNA: That doesn't help my
20 objection, but --

21 THE WITNESS: I'm not a
22 psychometrician, and I can't sound as
23 intelligent as you want me to. I've
24 explained what validity means to me, what
25 reliability means to me, and I'm comfortable

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1 with the content of the exam, i.e. validity,
2 and how we've arrived at that. I'm

3 comfortable with the reliability of the
4 exam. I think both are a fair and equitable
5 means of looking at minimum competency, and
6 outside of a computer-generated, simulated
7 bench exam, I don't see how we can improve
8 on that.

9 Q Now I need you to answer my question. A
10 I said I don't know. I said I'm not a
11 psychometrician.

12 Q All right.

13 A I can't give you values.

14 Q Doctor, let me hand you what's been
15 marked Exhibit 5.

16 (At this time Plaintiff's Exhibit
17 5 was marked for identification purposes.)

18 BY MR. RECKER:

19 Q I would like you to look at this, and
20 tell me if you've ever seen this document
21 before.

22 A I don't -- no, I've not seen this.

23 Q Would you turn --

24 A Oh.

25 Q Would you turn to page three, paragraph

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1 three, "Principles of Tests and
2 Measurements."

3 A Okay.

4 Q Just read that to yourself, just that
5 paragraph.

6 A I'm just trying to digest it. Go
7 ahead.

8 Q As a member of the Ohio State Dental
9 Board which accepts only the NERB
10 examination for initial licensure in Ohio,
11 is there anything in that paragraph that
12 concerns you?

13 MR. HANNA: Objection for several
14 reasons, one of which is the opportunity to
15 review the entire document, and also the
16 foundation on which you're asking the
17 question.

18 THE WITNESS: It talks about

19 CRDTS's and NERB's concepts of calibration
20 and analysis were not congruent. I mean,
21 yeah, okay. I'm assuming it's saying that
22 the --

23 MR. HANNA: No. I don't want you
24 to assume what it says.

25 THE WITNESS: Yeah, I don't know.

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1 MR. HANNA: Just if you can
2 answer the question, answer it.

3 THE WITNESS: Am I concerned?
4 No.

5 BY MR. RECKER:

6 Q Do you know what data they're talking
7 about, that CRDTS is talking about, data
8 they were unable to provide for the first
9 time in 15 years?

10 A Post-calibration data.

11 Q How do you know that?

12 A It just says that here. I'm assuming

13 that's what he's talking about.

14 Q You still believe it's not necessary,

15 post-calibration data?

16 A The exercise is there, and it satisfies

17 what we're there to do. I just explained

18 what that data would be, everyone getting 80

19 percent. I mean, we can't leave the room

20 before everyone gets at least 80 percent.

21 That's what calibration is.

22 Q This is talking about post examination.

23 A That's not calibration then. That's

24 different.

25 Q So, your belief is they're only talking

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1 about post calibration data?

2 A Yeah.

3 Q Okay, which NERB doesn't do?

4 A Uh-uh.

5 Q Nor does it do post-examination

6 profiling data?

7 A Not that I am aware of.

8 Q In any event, you don't believe either

9 of those data reports are necessary to

10 attain a valid and reliable examination.

11 A Not when it leads you down the same

12 path. It would be nice to just have

13 reports, but if you're going to end up doing

14 exactly the same thing the next time, then

15 it would be nice to have them, but it

16 doesn't affect the outcome of the students,

17 and it doesn't affect what happens the next

18 time. So --

19 Q Do you know --

20 A I don't see the value added once again.

21 Q Do you know, of the boards who

22 implement post-examination profiling, do you

23 know how many examiners are then required to

24 retrain or to be excluded from examining

25 because of the profiling data?

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1 A In other boards or other jurisdictions?

2 No, I don't know.

3 Q Assume that some examiners are then
4 disqualified from examining. Wouldn't you
5 want to know that if one of those examiners
6 was amongst your examiners in NERB?

7 A Do you recall me talking about the
8 grading of the examiners at the end, that we
9 go through an evaluation? That's the same
10 thing. We evaluate our examiners in the
11 same way. It's just a different mechanism
12 of evaluation. We evaluate each examiner,
13 and if one of them is substandard, then that
14 evaluation goes forward. Do you remember me
15 talking about that?

16 Q Yes, but I want to make it very clear
17 on the record. What you're talking about is
18 not a compilation of data representing each

19 grade on each procedure given by each

20 examiner, correct?

21 A Correct.

22 Q Have you reviewed the qualifications of

23 the witnesses, Dr. Shapiro and Dr. Courts?

24 A Yeah.

25 MR. HANNA: What was the

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1 question? I'm sorry.

2 MR. RECKER: If you'd stop

3 laughing, you'd hear me.

4 MR. HANNA: I wasn't laughing at

5 that question.

6 THE WITNESS: The qualifications

7 of Shapiro are right here.

8 BY MR. RECKER:

9 Q Dr. Shapiro and Dr. Courts, have you

10 reviewed their qualifications prior to

11 today?

12 A Briefly, yes.

13 Q And do you consider yourself at least
14 to be as equally qualified as they are to
15 render opinions on testing validity and
16 reliability?

17 A I feel I'm qualified as a member of a
18 board that looks out for the good of the
19 public, yes.

20 Q Then, in your opinion, would any board
21 member in any state be as qualified as you
22 are?

23 A Yeah.

24 Q Any dentist board member.

25 A Yes.

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1 Q I know I skipped an exhibit, but that's
2 okay.

3 Dr. Awadalla, you're a peach.

4 Thanks.

5 A Thank you.

6 MR. HANNA: I don't waive

7 signature. Rather than have to explain

8 everything, that's the way I am.

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1 CERTIFICATE

2 The State of Ohio,)

3 County of Cuyahoga.)

4 I, Luanne Stone, a Notary Public within

5 and for the State of Ohio, duly commissioned

6 and qualified, do hereby certify that the

7 above-named witness, ELEANORE AWADALLA,

8 D.D.S., was by me first duly sworn to

9 testify to the truth, the whole truth and

10 nothing but the truth in the case aforesaid;

11 that the testimony then given by the

12 above-referenced witness was by me reduced

13 to stenotypy in the presence of said

14 witness; afterwards transcribed; and that

15 the foregoing is a true and correct

16 transcription of the testimony so given by

17 the above-referenced witness.

18 I do further certify that this

19 deposition was taken at the time and place

20 in the foregoing caption specified and was

21 completed without adjournment.

22 I do further certify that I am not a

23 relative, counsel or attorney for either

24 party, or otherwise interested in the

25 event of this action.

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2 IN WITNESS WHEREOF, I have hereunto set

3 my hand and seal of office at Cleveland,

4 Ohio this ----- day of -----

5 A.D., 1999.

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9 Luanne Stone, f.k.a.,Protz-

10 Notary Public

11 Within and for the State of Ohio

12 My commission expires 4/6/03.

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