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Attorneys for Dr. Larry R. Misner, Jr.

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO



POCATELLO DENTAL GROUP)
 P.C., an)
 Idaho professional corporation,)

Plaintiff,)

vs.)

INTERDENT SERVICE)
 CORPORATION,)
 a Washington corporation,)

Defendant.)

INTERDENT SERVICE)
 CORPORATION,)
 a Washington corporation,)

Counterclaimant,)

Case No.: CV-03-450-E-LMB

**COUNTERDEFENDANT MISNER'S
 SUPPLEMENTAL MEMORANDUM IN
 OPPOSITION TO
 COUNTERCLAIMANT INTERDENT
 SERVICE CORP.'S MOTION FOR A
 TEMPORARY RESTRAINING ORDER**

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)
)
vs.)
)
POCATELLO DENTAL Group, P.C.)
an Idaho professional)
corporation; DWIGHT G.)
ROMRIELL, individually; LARRY)
R.)
MISNER, JR., individually; PORTER)
SUTTON, individually; ERNEST)
SUTTON, individually; GREGORY)
ROMRIELL, individually; ERROL)
ORMOND, individually;)
and ARNOLD)
GOODLIFFE, individually,)
)
Counterdefendants.)
)
_____)
)

LARRY R. MISNER, JR, individually)

Counterclaimant,)
)

vs.)
)

INTERDENT SERVICE)
CORPORATION,)
a Washington corporation,)
)

Counterdefendant.)
)
_____)
)

LARRY R. MISNER, JR. individually)

Crossclaimant,)
)
 vs.)
)
 POCATELLO DENTAL GROUP,))
 P.C., an)
 Idaho professional corporation,)
)
 _____ Crossdefendant.)

INTRODUCTION

Counsel for CounterDefendant Misner submits this Supplemental Memorandum in Opposition to Counterclaimant InterDent Service Corp.’s (“InterDent”) Motion for a Temporary Restraining Order pursuant to this Court’s request made during a telephonic hearing on InterDent’s Motion. The attorney for Dr. Greg Romriell will submit a full transcript of Dr. Romriell’s deposition and I will submit a full transcript of the deposition of Dr. Larry Bybee, both depositions taken by InterDent on Friday, June 25, 2004. For the Court’s convenience, sections of these two transcripts are cited below and their relevance to the issues argued before this Court on June 30, 2004 is identified.

DISCUSSION OF TRANSCRIPTS

1. **Any TRO Issued Retraining Dr. Misner’s Ability to Provide Pediatric Dental Services in Pocatello Would Create a Significant Detriment to the Public Interest in the Loss of Dr. Misner’s Services in Pocatello.**

Dr. Misner is a “certified pediadontists”. *Romriell Depo., p 15, ll 7-8.*

Dr. Misner is a “certified pediatric dentist”. *Bybee Depo., p 16, ll 16-20.*

Dr. Bybee is a general dentist who treats children. *Romriell Depo., p 15, ll 9-16.*

Dr. Bybee began to work with Dr. Misner treating only children at Pocatello Dental Group

in July 1997. *Bybee Depo.*, p 10, 11-17.

Dr. Snow is currently at Pocatello Dental Group and treats children but will be departing the Pocatello Dental Group in approximately one week. *Romriell Depo.*, p 15-16, ll 21-14.

Dr. Misner and Dr. Bybee "are nearly the only dentists in Pocatello that see Medicaid-Medicare patients. Most, I don't know of another general dentists that sees them, and the other pediatric dentists has refused to see them when we have referred to his office."¹ *Romriell*, p 23, ll 13-21.

The Pocatello Dental Group was concerned about how Dr. Bybee's and Dr. Misner's patients could be cared for on an emergency basis because, after Dr. Misner's and Bybee's departure, the Pocatello Dental Group did not have the capability to work them into their schedules. The Pocatello Dental Group asked InterDent to allow these two dentists to continue to see the pediatric patients on an emergency basis but InterDent refused. **The Pocatello Dental Group could not get these children with emergencies seen in the Pocatello community until Dr. Bybee stepped in and offered after hours emergency treatment at his brother's office.** *Romriell*, p 28, ll 7-24 (*emphasis added*).

Both Dr. Bybee and Dr. Misner offered to see children for free at Pocatello Dental Group after they had terminated their employment from the Group but that offer was rejected by InterDent. *Bybee Depo.*, p 24, ll 8-17.

Dr. Romriell was personally contacted by the families of approximately 20 children who

¹ The cited deposition testimony of Dr. Romriell and Dr. Bybee, two licensed Idaho dentists practicing in Pocatello, Idaho, on the current availability of pediatric dental care in the Pocatello area cannot be disputed by InterDent's V.P. (a non-dentist living outside of Idaho) Kevin Webb's review of the Qwest Yellow Pages for Pocatello. See *Affidavit of Kevin Webb in Support of Defendant/Third Party Plaintiff's motion for Temporary Restraining Order*.

could not get emergency dental care after Dr. Bybee and Misner left Pocatello Dental Group.
Romriell, p 30, ll 2-7.

2. **Dr. Misner is Not in Competition with Pocatello Dental Group and Therefore InterDent Cannot Possibly Be Harmed by Dr. Misner's Practice of Pediatric Dentistry in Pocatello.**

Dr. Romriell, as President of the Pocatello Dental Group, was not concerned about giving Dr. Bybee and Dr. Misner patient lists and patient records when they left the Group "[b]ecause each of them practice in an area that I am not trained to practice in. They are doing me a favor by taking those patients." . . . **I am not qualified in any way, shape, or form to represent myself as being able to treat their patients. . . . Nor is any other doctor in the Pocatello Dental Group.**"

Romriell, pp 82-83, ll 17-8 (emphasis added).

Dr. Misner's "leaving" Pocatello Dental Group did not significantly affect the individual practices of the dentists associated with Pocatello Dental Group, but, could be "devastating" to InterDent due to the large decrease in total money flowing into Pocatello Dental Group after Dr. Misner's departure from the Group. *Romriell Depo., pp 54-55, ll 16-15* (Misner's departure from the group "devastating" but no allegation that Misner's departure breached any agreement with InterDent. No evidence of further harm after departure due to Misner's competition).

After Dr. Misner and Dr. Bybee left the Group, Dr. Romriell referred children to Dr. Bybee for treatment. Dr. Bybee believes that the dentists remaining in Pocatello Dental Group that he used to work with do not want to treat pediatric patients. *Bybee Depo., pp 64-65, ll 3-22.*

CONCLUSION

The above citations to the deposition transcripts of Dr. Romriell and Dr. Bybec further support Dr. Misner's argument that InterDent's Motion for a Temporary Restraining Order must be denied as InterDent has failed to show either (1) that the Pocatello Dental Group can either treat or make appropriate referrals for children with dental emergencies without Dr. Misner in Pocatello or (2) any harm to InterDent will flow from Dr. Misner's competition with, as opposed to his departure from, the Pocatello Dental Group.

DATED this 10th day of July, 2004.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By 
Richard A. Hearn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of July, 2004, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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