

FEB - 5 2004

_____ M. REC'D _____
LODGED _____ FILED _____

Erik F. Stidham, ISB #5483
efstidham@stoel.com
G. Rey Reinhardt, ISB #6209
grreinhardt@stoel.com
STOEL RIVES LLP
101 South Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Scott J. Kaplan, Pro Hac Vice
sjkaplan@stoel.com
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Telephone: (503) 224-3380
Facsimile: (503) 220-2480

Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

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

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Third-Party Plaintiff,

v.

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation; DWIGHT G.
ROMRIELL, individually; LARRY R.

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

AFFIDAVIT OF SCOTT J. KAPLAN IN
SUPPORT OF DEFENDANT/THIRD-
PARTY PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER - 1

42

MISNER, JR., individually; PORTER
SUTTON, individually; ERNEST SUTTON,
individually; GREGORY ROMRIELL,
individually; ERROL ORMOND,
individually; and ARNOLD GOODLIFFE,
individually,

Third-Party Defendants.

STATE OF OREGON)
) ss.
County of Multnomah)

1. I am a member of Stoel Rives LLP, pro hac vice counsel for defendant and third-party plaintiff InterDent Service Corporation ("ISC").

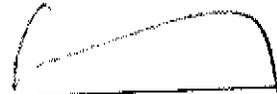
2. Upon being informed of Dwight Romriell's ("Romriell") diversion of Pocatello Dental Group's ("PDG") mail, on January 29, 2004 I faxed the Postmaster in Pocatello explaining ISC's rights under the Management Agreement and asking that the mail be released to ISC (Ex. 1). I attached a copy of the handwritten note from Romriell ISC obtained from the post office (Ex. 2).

3. On January 30, the Postmaster, Mr. Weise, called me and indicated that he was forwarding our request to the U.S. Postal Service Legal Department. I subsequently received a call from Julie Hellerud, a Postal Service lawyer in Colorado, asking for additional information and documentation that ISC is a successor to GMS Dental Management and PDG a successor to Idaho Dental Group, the parties to the Management Agreement. These I provided (Ex. 3). Ms. Hellerud indicated that they were awaiting information, if any, from Romriell to determine his rationale for diverting the mail. She anticipated that the Postal Service would reach a decision on whether to continue holding the mail on Wednesday, February 4, 2004.

4. On Wednesday, February 4, 2004, I received a voice-mail message from Ms. Hellerud indicating that James Price, counsel to PDG, had sent material in support of

Romriell's scheme and that she probably would have to forward the documents to Postal Service Headquarters in Washington, D.C.

5. On February 5, 2004, I received a call from Mr. Weise stating that Postal Service had decided to deliver to the mail to a post office box designated by the president of PDG. He would not provide the number of the box. The records I have seen indicate that the president of PDG is third-party defendant Gregory Romriell. Mr. Weise also stated that the Postal Service would comply with a court order directing that the mail be delivered to the PDG and ISC Pocatello office rather than the post office box designated by Gregory Romriell. He confirmed his conversation with me in a letter, a copy of which is attached as Exhibit 4.



Scott J. Kaplan

SUBSCRIBED AND SWORN to before me this 5th day of February, 2004.





Notary Public for Oregon

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER - 3

PortInd3-1469944.1 0021164-00081

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of February, 2004, I caused to be served a true copy of the foregoing **AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER** upon the following:

Gary L. Cooper
Ron Kerl
James P. Price
COOPER & LARSEN
151 N. 3rd Avenue, Ste. 210
PO Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182
Attorneys for Pocatello Dental Group

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Lowell N. Hawkes
Law Office of Lowell N. Hawkes, Chtd.
1322 East Center
Pocatello, ID 83201
Phone: (208) 235-1600
Fax: (208) 235-4200
Attorney for Dwight Romriell

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Thomas J. Holmes
Jones, Chartered
203 South Garfield
P.O. Box 967
Pocatello, Idaho 83204-0967
Phone (208) 232-5911
Fax (208) 232-5962
Attorney for Porter Sutton

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Richard A. Hearn
Racine Olson Nye Budge & Bailey,
Chtd.
201 E. Center
P.O. Box 1391
Pocatello, ID 83704-1391
Phone (208) 232-6101
Fax (208) 232-6109
Attorney for Larry Misner

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Errol Ormond
Pocatello Dental Group
4115 Yellowstone Hwy.
Pine Ridge Mall
Pocatello, Idaho 83202 - 2345

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Ernest Sutton
Pocatello Dental Group
4115 Yellowstone Hwy.
Pine Ridge Mall
Pocatello, Idaho 83202 - 2345

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

Gregory Romriell
Pocatello Dental Group
4115 Yellowstone Hwy.
Pine Ridge Mall
Pocatello, Idaho 83202 - 2345

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

Arnold Goodliffe
11540 North Buffalo
Pocatello, Idaho 83202-5218

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

DATED: this 5 day of February, 2004.



G.Rey Reinhardt
Attorneys for Defendant



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.274.3380
fax 503.220.2180
www.stoel.com

January 29, 2004

SCOTT J. KAPLAN
Direct (503) 294-9186
sjkaplan@stoel.com

VIA FACSIMILE AND FIRST-CLASS MAIL

Mr. Bruce Weise
Postmaster
730 E. Clark
Pocatello, ID 83201

Re: Pocatello Dental Group—Potential Mail Fraud by Dwight D. Romreill

Dear Mr. Weise:

This office represents InterDent Service Corporation ("ISC") the attorney-in-fact for receipt of business correspondence for Pocatello Dental Group ("PDG"), located at 4155 Yellowstone Highway, Pocatello, ID 83202. This is to follow-up on the discussions you have with both Bruce Call and Barbara Henderson of ISC regarding potential mail fraud by Dwight D. Romriell in misdirecting the PDG mail and to repeat ISC's instructions for the proper delivery of the mail.

The facts as we understand them are that Romriell visited your Post Office in the last day or two and delivered a hand-written document (copy attached) purporting to be the "owner" of PDG and directing that mail for PDG be held rather than delivered to PDG's office. When PDG's mail was not delivered, Ms. Henderson, ISC's office manager made inquiries and discovered the apparent fraud. Ms. Henderson, PDG's authorized representative for receipt of business correspondence, requested that the mail be released to her. However, she was refused pending additional explanation and documentation. Such explanation follows.

There are currently legal proceedings pending in federal court involving ISC, PDG, Romriell and others, United States District Court Case for the District of Idaho Case No. CV 03-450-LMB. However, the facts to the best of our knowledge are that Romreill is a former PDG dentist who has left the practice as of December 31, 2003. He is neither an employee nor officer of PDG nor authorized to act on its behalf. Instead, he is subject to a noncompetition agreement with PDG that is one of the issues in the litigation. We further understand that on January 2, 2004, Romreill attempted to redirect the mail using a change of address card, but was refused and provided a copy of Postal Service regulations explaining why his request was improper.

Mr. James P. Price
January 29, 2004
Page 2

Not only does Romriell lack the ability to act on PDG's behalf, but PDG has appointed ISC as the sole attorney-in-fact with regard to business correspondence. I attach the relevant portions of the Dental Group Management Agreement dated October 11, 1996 between PDG and ISC's predecessor, GMS Dental Management, Inc. ISC has succeeded to GMS's rights under the Management Agreement, and its right to act as the Manager under that Agreement was reaffirmed by order of the United States Bankruptcy Court dated October 7, 2003. We direct your attention to Article 4 of the Management Agreement, which gives ISC day-to-day supervision of business activities, including "administrative services" such as "office space and facility management" and "billing" and "collections." (Sections 4.1, 4.5(c) and (g).) In particular, ISC is responsible for the following:

4.6 Billing and Collection Payment of Expenses. In addition to the responsibilities of Manager under Section 2.6(b), Manager shall be responsible for all billing and collecting activities required by Group. Manager shall also be responsible for reviewing and paying accounts payable of Group. *Group hereby appoints the Manager its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of Group:*

- (a) Bill and collect in Group's name or the name of the individual practicing dentist, all charges and reimbursements for Group. Group shall give Managers all necessary access to Patient records to accomplish all billing and collection. In so doing, Manager will use its best efforts but does not guarantee any specific level of collections, and Manager will comply with Group's reasonable and lawful policies regarding courtesy discounts;
- (b) Take possession of and endorse in the name of Group any and all instruments received as payment of accounts receivable;
- (c) Deposit all such collections directly into Accounts and make withdrawals from such Accounts in accordance with this Agreement; and
- (d) Place accounts for collection, settle and



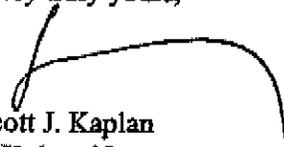
Mr. James P. Price
January 29, 2004
Page 3

compromise claims, and institute legal action for the recovery of accounts. (Emphasis added).

For the past seven years, ISC and its predecessor have received the mail at the PDG address on Yellowstone Highway to fulfill these responsibilities. Should its business correspondence be diverted, PDG's will not be able to pay its bills and ISC will not, for example, be able to fulfill its responsibility to "take possession of and endorse in the name of Group any and all instruments received as payment of accounts receivable" and to "deposit all such collections into Accounts." Instead, Romriell's attempt to divert PDG's mail creates the possibility that payment made to PDG will be misappropriated and will not be deposited into the proper accounts. See 18 U.S.C. § 1341.

We therefore request again that the Post Office comply with Ms. Henderson's request to reinstitute delivery of PDG's mail to its office. With each additional day of nondelivery, the possibility that PDG's creditors will be unpaid and its funds misappropriated increases. Please contact Ms. Henderson to confirm that the Post Office will comply with this request. Please also let us know if you have any questions or require further documentation.

Very truly yours,



Scott J. Kaplan
SJK:dmv:jf
Enclosure

cc: Mr. Ivar Chhina (via e-mail)
Mr. Kevin Webb (via e-mail)
Mr. Bruce Call (via e-mail)

DENTAL GROUP MANAGEMENT AGREEMENT

THIS DENTAL GROUP MANAGEMENT AGREEMENT (this "Agreement") is dated as of October 11, 1996 and is effective as of the date set forth in Section 6.1 ("Effective Date") by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Manager") and wholly-owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company") and IDAHO DENTAL GROUP, P.A., an Idaho professional corporation ("Group").

RECITALS

A. Group engages in the practice of dentistry by providing dental services to patients of Group ("Group Patients") and to enrollees ("Beneficiaries") of dental plans ("Plans") under contracts ("Payor Contracts") between Group and Plans or between Beneficiaries and Plans.

B. Group provides dental services to Beneficiaries and to Group Patients through arrangements with licensed individuals ("Providers"). Such arrangements may include contracts ("Employment Agreements") with dentist employees (collectively "Employee Providers") and agreements ("Provider Subcontracts") with independent contractor dentists and non-dentist providers of various dental care services (collectively "Subcontract Providers").

C. All activities of Group subject to this Agreement are referenced as the "Practice." All references to "dental" care and services include general and specialist dental services. All references to "dentists" include generalists and specialists.

D. Manager is a management services company that has been organized to provide certain support services for the Practice and for other dental groups. Manager is in the business of providing or arranging for management services, facilities, equipment and certain personnel necessary for the operation of the Practice.

E. Group desires to retain Manager on an independent contractor basis to provide management services that are more particularly described below, and Manager desires to provide such management services under the terms and conditions set forth in this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, Manager and Group agree as follows:

EXHIBIT 1
PAGE 4 OF 7

ARTICLE 4

MANAGEMENT SERVICES

4.1 General Description of Services. Within the limitations set out elsewhere in this Agreement, Manager shall provide or arrange for the provision to Group of all support services reasonably necessary and appropriate for the efficient operation of the Practice. Such services include all administrative services necessary to Group's performance of its obligations under Payor Contracts, contracting, marketing, capital formation and assistance with long term strategic planning. Manager shall exercise its best efforts to fulfill the administrative functions of a well managed dental group and to maintain the Practice's status as the preeminent group practice in Pocatello and the surrounding area. *

4.2 Facilities. When appropriate, Manager shall secure and maintain facilities, including, without limitation, office space, improvements, furnishings, equipment, supplies and personal property, of a nature and in a condition necessary and appropriate for the efficient and effective operations of the Practice subject to the general approval of the Joint Operations Committee. Manager shall secure and maintain said facilities in the name of Group. Group hereby accepts and approves of the facilities initially provided by Manager. However, Manager from time to time shall make such facilities changes, including but not limited to dental equipment purchases, as reasonably may be requested by Group so that Group may conduct its practice according to the level required to maintain the practice's status as the preeminent group practice in Pocatello and the surrounding area.

4.3 Purchased Items and Services. Manager shall serve as the purchasing agent for Group and shall arrange for personnel benefits, insurance, and any other items and services required for the proper operation of the Practice.

4.4 Manager Personnel.

(a) Management Team. Subject to any approval or consulting rights of the Joint Operations Committee, Manager shall engage or designate one or more individuals experienced in dental group management and direction, including, but not limited to, an administrator, who will be responsible for the overall administration of the Practice including day-to-day operations and strategic development activities.

(b) Other Manager Personnel. Manager shall select, hire, train, supervise, monitor and terminate all non-Provider personnel necessary for the operation and management of the Practice; provided, however, with respect to the selection, hiring and termination of non-Provider clinical staff, Manager shall obtain the consent of the Group, which consent will not be unreasonably withheld.

4.5 Day-to-Day Management and Supervision. Subject to any approval or consulting rights of the Joint Operations Committee, Manager shall provide general management including, but not limited to, day-to-day supervision of:

- (a) Manager personnel;
- (b) Equipment and supply acquisition;
- (c) Office space and facility maintenance;
- (d) Patient records organization and retention;
- (e) Third party payor contracting;
- (f) Case management;
- (g) Billing, collections and accounting activities as set forth below;
- (h) All operating aspects and policies of the Practice including, but not limited to, hours of operation, work schedules, standard duties and job descriptions, for all nondentist personnel; and
- (i) Other related and incidental matters.

4.6 Billing and Collection Payment of Expenses. In addition to the responsibilities of Manager under Section 2.6(b), Manager shall be responsible for all billing and collecting activities required by Group. Manager shall also be responsible for reviewing and paying accounts payable of Group. Group hereby appoints the Manager its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of Group:

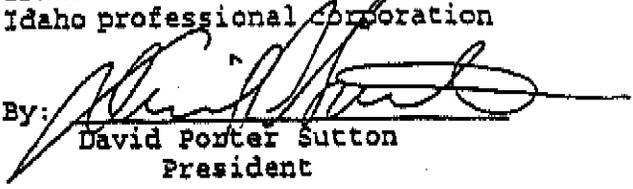
- (a) Bill and collect in Group's name or the name of the individual practicing dentist, all charges and reimbursements for Group. Group shall give Manager all necessary access to Patient records to accomplish all billing and collection. In so doing, Manager will use its best efforts but does not guarantee any specific level of collections, and Manager will comply with Group's reasonable and lawful policies regarding courtesy discounts;
- (b) Take possession of and endorse in the name of Group any and all instruments received as payment of accounts receivable;
- (c) Deposit all such collections directly into Accounts and make withdrawals from such Accounts in accordance with this Agreement; and
- (d) Place accounts for collection, settle and compromise claims, and institute legal action for the recovery of accounts.

original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Group and Manager have caused their authorized representatives to execute this Agreement on the date first above written.

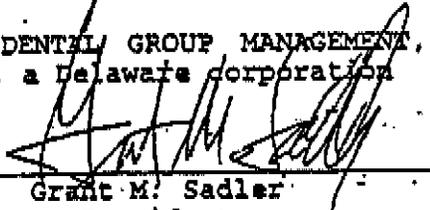
"Group"

IDAHO DENTAL GROUP, P.A., an Idaho professional corporation

By: 
David Porter Sutton
President

"MANAGER"

GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation

By: 
Grant M. Sadler
President

AGREEMENT 1
PAGE 1 OF 7

1-27-04
Pocatello Dental Group

4155 Yellowstone

Hold mail at office

The following people are
the only ones authorized to
pick up the mail

Dwight Romrell

Gregory Romrell

R Russell Misner

Larry Bybee

A. Jay Goodliffe

Errol ~~Thompson~~ Ormond

Eric Johnson



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
phone 503.224.3380
fax 503.220.2480
www.stoel.com

	Name:	Fax No.	Company/Firm	Phone No.
TO:	Julie Hellerud	(720) 284-5002	U.S. Postal Service Legal Department	(720) 284-5004 ⁹

	Name:	Sender's Direct Dial:	Sender's Direct Email:
FROM:	Scott J. Kaplan	(503) 294-9186	sjkaplan@stoel.com

Client:	InterDent, Inc.	Matter:	Pocatello Dental Group
---------	-----------------	---------	------------------------

Date: January 30, 2004

No. of Pages (including this cover): 12

Originals Not Forwarded Unless Checked: First Class Mail Overnight Delivery Hand Delivery

In case of error call Donna Vanderschoot at (503) 294-9318.

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. If the reader of this message is not the intended recipient or an employee responsible for delivering the facsimile, please do not distribute this facsimile, notify us immediately by telephone, and return this facsimile by mail. Thank you.

COMMENTS: Please call, and I will talk you through the documents.

Thanks,
Scott

EXHIBIT 3
PAGE 1 OF 1

State of Idaho

Department of State

CERTIFICATE OF AMENDMENT OF

IDAHO DENTAL GROUP, P.A.
File Number C 116224

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Amendment to the Articles of Incorporation of IDAHO DENTAL GROUP, P.A., changing the corporate name to POCATELLO DENTAL GROUP, P.C., duly executed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Amendment to the Articles of Incorporation and attach hereto a duplicate original of the Articles of Amendment.

Dated: October 18, 1996



Pete T. Cenarrusa
SECRETARY OF STATE

By _____

[Signature]

Oct 18 9 13 AM '96
SECRETARY OF STATE
STATE OF IDAHO

ARTICLES OF AMENDMENT

I

Currently, the name of the corporation is Idaho Dental Group, P.A.

II

The Articles of Incorporation is hereby amended by modifying Article I of the Articles of Incorporation to read as follows:

The name of this corporation is Pocatello Dental Group, P.C.

III

The foregoing amendment was adopted on October 14th, 1996 by the D. Porter Sutton, the sole incorporator, pursuant to Idaho Code §§ 30-1-59 and 30-1-61.

IV

No shares have been issued.

DATED this 14th day of October, 1996.

IDAHO DENTAL GROUP, P.A.

By *D. Porter Sutton*
D. Porter Sutton, Incorporator

STATE OF IDAHO)
) :ss.
County of Bannock)

I, a Notary Public, do hereby certify that on this 14th day of October, 1996, personally appeared before me, D. PORTER SUTTON, who being by me first duly sworn, severally declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

D. Porter Sutton NOTARY PUBLIC STATE OF IDAHO
Residing at: *Pocatello* DISTRICT 1853
My commission expires: *7/1/97* AMEND PROF
10 30/00- 30.00

(SEAL)

GARY L. COOPER
REED W. LARSEN
RON KERL
JAMES P. PRICE
M. ANTHONY SASSER
E. W. "SKIP" CARTER
JAMES D. RUCHTI

COOPER & LARSEN

151 NORTH 3rd AVE. - STE. 210
P.O. BOX 4229
POCATELLO, ID 83201-1829

TELEPHONE (208) 235-1146
FAX (208) 235-1182

www.cooper-larsen.com

2003 OCT 30 AM 8:53

CLERK OF STATE
STATE OF IDAHO

Attorneys at Law

October 22, 2003

Secretary of State
P.O. Box 83720
Boise, ID 83720-0080

C 116224
Clerk of office

RE: *Pocatello Dental Group, P.C.*
Filing No. C116224

Dear Sir/Madam:

Please be advised that Dr. Greg Romreill has been elected and appointed to serve as President of Pocatello Dental Group, P.C., effective October 29, 2003. He replaces Dr. L.R. Misner.

Sincerely,

James P. Price
JAMES P. PRICE

JPP/mn
Enclosure

01-292

EXHIBIT 3
PAGE 4 OF 4

Erik F. Stidham (ISB No. 5483)
G. Rey Reinhardt (ISB No. 6209)
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Fax Number: (208) 389-9040
efstidham@stoel.com
grreinhardt@stoel.com

Attorney for Defendant Interdent Service Corporation

U.S. COURTS
CLERK - 3 FILE 43
CAMELLIA S. GORRE
CLERK IDAHO

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL Group, P.C., an
Idaho Professional Corporation

Plaintiff,

v.

INTERDENT SERVICE
CORPORATION, a Washington
Corporation

Defendant.

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

**AFFIDAVIT OF IVAR CHHINA IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY
INJUNCTION**

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

1. I am the president of defendant InterDent Service Corporation ("ISC"), a Washington corporation. The following is true to the best of my knowledge, information and belief based upon my personal knowledge, my review of ISC business records and my access to the institutional knowledge of the company.

2. In October 1996, GMS Dental Group Management, Inc. ("GMS") acquired (the "Acquisition") all of the nonprofessional assets of the dental practice presently conducted by

AFFIDAVIT OF IVAR CHHINA IN OPPOSITION TO PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION - 1

Boise-163475.1 0021164-00081

EXHIBIT 3
PAGE 5 OF

plaintiff Pocatello Dental Group P.C., formerly known as Idaho Dental Group P.C. (the "Group"), in exchange for payment of \$2.8 million in cash and stock to the shareholders of the Group, including affiants L.R. Misner, Jr. and Dwight Romriell, who were each paid \$400,000. Both Dr. Misner and Dr. Romriell took their \$400,000 entirely in cash.

3. In connection with and as a material part of the consideration for the Acquisition, the Group entered into a Management Agreement with GMS dated October 11, 1996, (the "Management Agreement"), a copy of which is attached hereto as Exhibit A.

4. GMS subsequently changed its name to Gentle Dental Management, Inc. ("GDMI"). GDMI was later merged with and into Gentle Dental Service Corporation ("GDSC"). GDSC then changed its name to InterDent Service Corporation ("ISC"), which succeeded to all of GMS's right, title and interest in and to all of GMS's assets, including GMS's right, title and interest in and to the Management Agreement.

5. ISC provides management services, facilities and equipment to the Group pursuant to the terms of the Management Agreement. Professional and cost-effective management is necessitated by the structure of this standard contractual arrangement. The Group's shareholder dentists are compensated on the basis of 38 percent of their net collections, regardless of the costs to ISC of managing their practice. ISC employs the nonprofessional staff, leases the facilities and owns the equipment. As a result of this arrangement, ISC rather than the Group dentists, bears the risks and rewards of cost control.

6. If the Group dentists had unlimited discretion to increase costs as they seek in this action, these costs would be borne entirely by ISC, depriving ISC of any of the consideration for which its predecessor entered into the Management Agreement and paid the Group's shareholder

dentists \$2.8 million in cash and stock in 1996. Under these circumstances, the entire economic arrangement embodied in the Management Agreement would be undermined.

7. Attached hereto as Exhibit B is a copy of a report prepared by a consultant retained solely by the Group to evaluate its practice. The Group's consultant concluded that despite having the use of ISC's \$2.8 million for seven years, the Group's shareholder dentists "are having Seller's remorse." (Exhibit B at 14.) The Group's consultant urged the Group dentists to "respect the financial policy and procedure that has been established by the management company." (*Id.* at 8.) The consultant provided the Group dentists the following analogy: "It is sort of like when you have sold a car to a person and yet you want to keep the car to drive. The person you sold the car will usually not drive the way you do . . . but, they have paid for the car. Give it to them." (*Id.* at 12.) Unfortunately, the Group has a history of disregarding this advice, to the detriment of the practice.

8. For example, in the first quarter of 2003 alone, the Group wrote off over \$76,000 in dentistry as "professional" or "courtesy" discounts. ISC instructed the Group dentists that under the Management Agreement, ISC had responsibility for billing matters and that such free services to friends and relatives would need approval from ISC management. In response, ISC received communications such as Exhibit C from Dr. Dwight Romriell's lawyer threatening ISC and alleging, among other things, "HIPAA violations" and "federal mail violations." The Group even insisted that its counsel attend the Joint Operations Committee (the "JOC") meetings ISC scheduled to try to resolve the Group dentists' complaints in a businesslike and professional manner.

9. On May 9, 2003, ISC filed for bankruptcy reorganization under Chapter 11, *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California

Case No. 03-13494, and obtained an order authorizing it to "operate its business and to perform its obligations, in the ordinary course of business pursuant to the Management Agreements with the Professional Corporations. . . ." (Exhibit D.)

10. On May 16, 2003, ISC received a letter from the Group's shareholder dentists' individual counsel threatening unilateral termination of the Management Agreement, primarily on the basis of a disagreement with ISC over the financial controls to which the Group agreed in the Management Agreement and which are the critical component of that agreement. (Exhibit E.) ISC advised the Group's shareholder dentists' individual counsel that a JOC meeting would be the best forum for discussion of the Group's shareholder dentists' concerns and that any action to terminate the Management Agreement would be contrary to the automatic stay under 11 USC § 1132. (Exhibit F.)

11. Consequently, in the bankruptcy, the Group's shareholder dentists made many of the same claims as they do here (other than as related to Dr. Romriell) both in an adversary proceeding and in objecting to ISC's assumption of the Management Agreement. On October 3, 2003, only six days before they filed this action, the Group's shareholder dentists, in a stipulation, withdrew all of their claims and objections to ISC's assumption of the Management Agreement. The Group's shareholder dentists stipulated their agreement that "[t]he Contract [*i.e.*, the Management Agreement] is assumed by debtor pursuant to the Plan [of reorganization], and no prepetition cure payments are due upon assumption." (Exhibit G at 3.) The Bankruptcy Court approved ISC's plan of reorganization on October 9, 2003, including the Group's stipulated dismissal. Nonetheless, within a week of agreeing to dismiss all of their claims, the Group refiled them in this action.

12. Dr. Romriell provided written notice of his resignation on April 11, 2003. This gave him six months to establish a practice outside the area of his noncompete agreement with the Group. In fact, Dr. Romriell has set up a new practice outside of the Group, as indicated in the attached Exhibit I, which indicates that he has an office and is accepting patients. This is inconsistent with what Dr. Misner, who is the president of the Group, told me in early October 2003. This discussion was in the context of a negotiation to give Dr. Romriell additional time to complete his establishment of his own office. Dr. Misner informed me that Dr. Romriell intended to set up his own practice by approximately December 2003, but he did not inform me that Dr. Romriell had, in fact, already done so.

13. I continued my discussions with Dr. Misner through the weekend of October 11 and October 12, 2003. On October 10, 2003, shortly after (we later discovered) the Group obtained its TRO without notice to ISC, I received a letter from Dr. Misner reneging on an offer to resolve this dispute. (Exhibit H.) In response, I called Dr. Misner, and we had conversations over the weekend continuing to work toward a resolution. Dr. Misner did not tell me that the Group had already obtained a secret TRO or, again, that Dr. Romriell had already opened an office. The Group did not disclose the TRO to ISC until it delivered the papers to our office manager in Pocatello on Monday, October 13, 2003.

14. ISC did not discover Exhibit I, with the details of Dr. Romriell's new office, until Friday, October 24, 2003. ISC later learned of Exhibit J, confirming that Dr. Romriell was treating TMJ patients in Pocatello. ISC immediately demanded that the Group withdraw the TRO. The Group refused to do so.

15. Since Dr. Romriell has started seeing patients at his private office, there have been large blocks of time during which Dr. Romriell has no appointments at the Group's office.

For example, despite being scheduled to work from 8 a.m. to 1 p.m. on Friday, October 31, 2003 at the Group's office, Dr. Romriell did not, in fact, see any patients.

16. ISC does not claim the right to hire or fire Dr. Romriell. He has been employed by the Group, not by ISC. The right ISC has under the Management Agreement is, in general, to approve or disapprove costs incurred by Group that ISC will have to bear. Here such costs would include Dr. Romriell's numerous staff personnel and his allocated share of office overhead. As illustrated in Exhibit K, the average weekly cost to ISC of employing staff for Dr. Romriell between January 2003 and September 2003 was over \$1,900.

17. If rehired, Dr. Romriell would be an employee of the Group. ISC only claims the right explicitly stated in Article 5.2 of the Management Agreement, which provides: "Group shall not negotiate or execute any Provider Subcontract, Employment Agreement, or any amendment thereto, or terminate any Provider Subcontract or Employment Agreement without the approval of the Joint Operations Committee." The JOC is composed of representatives of ISC and the Group. Under the plain language of Article 5.2, therefore, ISC has the contractual right to review and participate in JOC review of hiring staff to ensure such hiring makes economic sense.

18. On September 8, 2003, ISC through counsel wrote to the Group dentists proposing a JOC meeting with regard to Dr. Romriell. (Exhibit L.) Before learning that Dr. Romriell had already opened his new office, ISC indicated that it remained willing to have such a meeting at which the Group could present the business case, if any, for rehiring Dr. Romriell as opposed to referring patients to him when and if necessary. (Exhibit M.) If the JOC has not met to discuss other hiring decisions, this only means that the other decisions were not so problematic.

19. During the pendency of the TRO and any preliminary injunction, ISC will be damaged from a cash-flow perspective because it has to pay for Dr. Romriell's numerous staff and his overhead on a current basis but will only be reimbursed, if ever, depending upon collections. However, it is impossible to comply fully with the TRO because the ex parte TRO requires ISC to keep an "Autumn Hoskins" on staff. Our records show no Autumn Hoskins employed by ISC.

20. Collecting payments from insurance plans for TMJ work is often time-consuming and problematic. Consequently, ISC prefers not to work with any group containing a dentist who centers his or her practice around TMJ work. Indeed, with the exception of the Group and Dr. Romriell, ISC does not work with any group containing a dentist who focuses predominantly on TMJ work.

21. ISC is similarly damaged if the Court continues to manage the practice by injunction if it cannot effectively manage its staff. Actions by the Group and now the TRO have caused confusion and have undermined the authority of the ISC office manager. This damage was recognized by the Group's consultant, who concluded, for example, "Drs must NOT be negative about the management company in-house or in the community. Unfortunately, the staff and community perceive contention and conflicts" and "[s]taff knows too much about the issues between Drs. and corp. It's like putting kids against parents or step-parents." (Exhibit B at 6, 13.)

22. The practice's expenses for supplies and other items increased substantially in September 2003, so much so as to cause the practice to be unprofitable on an accrual basis.

23. ISC has not rescheduled Dr. Romniell's patients or denied the Group dentists access to files.

24. The Group's shareholder dentists have not offered to rescind the Management Agreement and repay to ISC the \$2.8 million they obtained in the Acquisition plus appropriate interest.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Ivar Chhina
Ivar Chhina

SUBSCRIBED AND SWORN to before me this 31st day of October, 2003.

Sara DeLofeli
Notary Public for California
Residing at El Segundo, CA
My commission expires April 17, 2005



POSTMASTER
POCATELLO IDAHO



February 5, 2004

Stoel-Rives LLP Attorneys at Law
Att'n: Scott J. Kaplan
900 S.W. 5th Avenue Suite 2600
Portland, Oregon 97204

Dear Mr. Kaplan:

As I indicated this morning in our telephone conversation, this is notification to you that on advice from our legal department, I have decided to release all mail destined for the Pocatello/Idaho Dental Group pursuant to the request of the President of that Group. I am basing my decision on postal regulations contained in the Domestic Mail Manual (DMM) at section D042.4.1. If your client believes this decision is in error they may seek a court order to direct other disposition of the mail. If an order is obtained, I will abide by such order once a copy of the order is in my possession.

During our conversation you asked for the P.O. Box address to which the mail will now be directed and for copies of the documentation supplied by the attorney for Pocatello/Idaho Dental Group. After consulting with our legal department I have decided that I will not provide that information. If you feel you need information regarding Pocatello/Idaho Dental Group's position in this matter, it should be sought from their attorney.

Sincerely,

A handwritten signature in cursive script that reads "C. Bruca Wiese".

C. Bruca Wiese
Postmaster