

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12254  
Y/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 12, 2006

STEPHEN G. CRANE, J.P.  
DAVID S. RITTER  
REINALDO E. RIVERA  
ROBERT J. LUNN, JJ.

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2005-09889

DECISION & ORDER

Mary Ward, et al., appellants, v Walter Engel, Jr.,  
respondent.

(Index No. 826/04)

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David J. Sokol, New York, N.Y. (Ephrem J. Wertenteil of counsel), for appellants.

Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (Andrew S. Regenbaum of  
counsel), for respondent.

In an action to recover damages for dental malpractice, etc., the plaintiffs appeal from  
an order of the Supreme Court, Dutchess County (Brands, J.), dated September 12, 2005, which  
granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the motion for  
summary judgment dismissing the complaint is denied.

Bare denials which do not address the specific allegations of malpractice set forth in  
the plaintiff's verified bill of particulars are insufficient to establish entitlement to judgment as a matter  
of law (*see Hutchinson v Bernstein*, 22 AD3d 527; *Johnson v Ladin*, 18 AD3d 439; *Drago v King*,  
283 AD2d 603, 604; *Allen v Blum*, 212 AD2d 562).

In support of his motion for summary judgment dismissing the complaint, the  
defendant submitted the affidavit of his dental expert who stated only that the defendant performed  
the subject crown procedure within good and accepted standards of dental care and that an abrasion  
of the patient's tongue is a well known risk of the procedure. The expert's affidavit failed to address

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any of the specific allegations of malpractice set forth in the plaintiffs' bill of particulars. Accordingly, the motion for summary judgment should have been denied without considering the sufficiency of the plaintiffs' papers in opposition (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

CRANE, J.P., RITTER, RIVERA and LUNN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court