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

D32974
H/prt

_____AD3d_____ Argued - October 27, 2011

ANITA R. FLORIO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

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2010-07845 DECISION & ORDER

Irin B. Wahid, etc., appellant, v Nazita Amni Pour, etc., defendant, Fred Khalili, etc., et al., respondents.

(Index No. 22447/04)

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John J. Ciafone, Astoria, N.Y., for appellant.

Patrick F. Adams, P.C., Great River, N.Y. (Charles J. Adams and Frank Cali of counsel), for respondents.

In an action to recover damages for dental malpractice, the plaintiff appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Queens County (O'Donoghue, J.), dated June 16, 2010, as, upon an order of the same court dated October 29, 2009, as amended by an order of the same court dated January 4, 2010, sua sponte, in effect, directing the dismissal of the complaint insofar as asserted against the defendants Fred Khalili and Kings Dentistry pursuant to 22 NYCRR 202.27(b) upon the plaintiff's failure to appear at a scheduled conference, is in favor of the defendants Fred Khalili and Kings Dentistry and against her dismissing the complaint insofar as asserted against those defendants.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

Under the circumstances of this case, the Supreme Court properly dismissed the complaint insofar as asserted against the defendants Fred Khalili and Kings Dentistry upon the plaintiff's failure to appear at a scheduled conference (*see* 22 NYCRR 202.27[b]; *Syed v Fedor*, 296 AD2d 399). Contrary to the plaintiff's contention, his counsel's purported "Affirmation of Engagement" (hereinafter the affirmation) did not excuse his counsel's failure to appear at the

scheduled conference. The affirmation did not comply with 22 NYCRR 125.1(e)(1), as the record did not indicate that the affirmation was filed with the Supreme Court together with proof of service on all parties (*see* 22 NYCRR 125.1[e][1]; *Matter of Sutton v Mitrany*, 30 AD3d 678, 679). Furthermore, the affirmation failed to comply with 22 NYCRR 125.1(e)(1) because it did not indicate the general nature of the action in which counsel was allegedly engaged, and did not include the probable date and time of the conclusion of the engagement (*see* 22 NYCRR 125.1[e][1][ii], [v]; *Matter of Sutton v Mitrany*, 30 AD3d at 679).

The plaintiff's remaining contentions are either without merit or improperly raised for the first time on appeal.

FLORIO, J.P., HALL, AUSTIN and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court