SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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INDEX NO. 805245/2019

ANA CISNEROS,

Plaintiff,

- v -

DR. ALEXANDER ROCK, DR. JOHN CHOI, DR. ROBERT WINEGARDEN, ROBERT F. WINEGARDEN, D.D.S., P.C., DR. TATYANA BERMAN, and SOL STOLZENBERG, D.M.D., P.C., doing business as TOOTHSAVERS,

Defendants.

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DECISION + ORDER AFTER INQUEST

I. INTRODUCTION

This is an action to recover damages for dental malpractice. The plaintiff alleged that the defendants willfully and wantonly permitted unlicensed dentists and unlicensed assistants and technicians to diagnose and treat her. The plaintiff further contended that, inter alia, the defendants negligently performed diagnostic procedures to determine the extent and nature of her dental problems, negligently prepared her teeth for crowns, negligently placed implants, failed to inform her of the risks and consequences of the prescribed treatment, and thereafter negligently abandoned her. In an order dated September 9, 2021, the court, upon concluding that the plaintiff set forth sufficient proof of the facts underlying her causes of action to recover for dental malpractice and lack of informed consent, granted the plaintiff's motion for leave to enter a default judgment against the defendants Dr. Alexander Rock, Dr. Robert Winegarden, and Robert F. Winegarden, D.D.S., P.C. (collectively the defaulting defendants), on the issue of liability, and set the matter down for an inquest on the issue of damages, to be conducted simultaneously with the trial against the answering defendants, Dr. John Choi, Dr. Tatyana Berman, and Sol Stolzenberg, D.M.D., P.C., doing business as Toothsavers.

On October 22, 2023, the plaintiff filed a note of issue for a nonjury trial. Thereafter, the court fixed September 4, 2024 as the date for both a nonjury trial against the answering defendants and the inquest against the defaulting defendants. None of the defaulting defendants appeared on that date. The court held an inquest on the issue of damages on that date. The plaintiff, however, had by then discontinued the action against Choi, Berman, and Toothsavers. The court awards compensatory damages against the defaulting defendants, jointly and severally, in the sum of $266,500.00, and awards punitive damages against the defaulting defendants, jointly and severally, in the sum of $60,000.00, for a total of $326,500.00.

II. FINDINGS OF FACT

The facts underlying the issue of liability for dental malpractice are set forth in this court's September 9, 2021 order.

At the September 4, 2024 inquest on the issue of damages, the plaintiff testified on her own behalf and adduced the testimony of Herbert Rubin, D.D.S., a dentist having practiced for over 50 years in New York. The court finds that the credible testimony of both the plaintiff and her expert dentist established the following facts:

The plaintiff first presented to the defaulting defendants and Choi due to damaged teeth and the need for implants. When she first went to the defaulting defendants' office, the plaintiff paid them $13,000.00 for necessary dental work, including the placement of a set of implants. She returned three months later to have the implants replaced after her gums and mouth became infected, and thereafter paid the defaulting defendants an additional $45,000.00 for this follow-up work. The plaintiff thereafter experienced pain, bleeding, and another infection, while her replacement implants were falling out. The defaulting defendants did not complete the necessary dental work and, in fact, when she returned to the defaulting defendants' office, it was closed. The plaintiff was instructed to travel to a New Jersey location but, when she arrived, she first was informed that the staff at that location would complete the dental work at no additional cost, but they subsequently asked her to pay an additional $1,500.00, which she

did. The plaintiff thereafter had to find a new dental practice to complete the work that the defaulting defendants had started, and it took five root canal treatments, the placement of new implants, and the expenditure of an additional $25,000.00 over a period of almost four years to rectify the improper work that the defaulting defendants had performed. The plaintiff still has problems eating, carries Fixodent glue to apply to her teeth every few hours to keep the implants in place, and requires more dental work.

The court finds that the plaintiff was left in a "deplorable" condition after her treatment with the defaulting defendants' practice, and now requires reconstruction of her upper and lower jaw, including the placement of additional implants, temporary bridges, final bridges, root canal therapy, and periodontal surgery. The bone grafts currently placed in the plaintiff's mouth will last her for "a couple of years" before they need revision. Finally, the fair and reasonable cost of fixing the plaintiff's teeth is $102,000.00.

III. CONCLUSIONS OF LAW

A defaulting defendant admits all traversable allegations in the complaint, including the basic issue of liability (*see Amusement Bus. Underwriters v American Intl. Group*, 66 NY2d 878, 880 [1985]; *Cole-Hatchard v Eggers*, 132 AD3d 718, 720 [2d Dept 2015]; *Gonzalez v Wu*, 131 AD3d 1205, 1206 [2d Dept 2015]). The defaulting defendants are, however, "entitled to present testimony and evidence and cross-examine the plaintiff's witnesses at the inquest on damages" (*Minicozzi v Gerbino*, 301 AD2d 580, 581 [2d Dept 2003] [internal quotation marks omitted]; *see Rudra v Friedman*, 123 AD3d 1104, 1105 [2d Dept 2014]; *Toure v Harrison*, 6 AD3d 270, 272 [1st Dept 2004]). The defaulting defendants elected not to present such testimony or cross-examine witnesses at the inquest here, despite being provided with notice of the inquest. This court already has determined that the plaintiff has a cause of action to recover for dental malpractice against them, inasmuch as a deviation or departure from accepted practice, and evidence that such departure was a proximate case of the plaintiff's injury, constitute such malpractice (*see Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Frye v Montefiore Med.*

Ctr., 70 AD3d 15, 24 [1st Dept 2009]; *Elias v Bash*, 54 AD3d 354, 357 [2d Dept 2008]; *DeFilippo v New York Downtown Hosp.*, 10 AD3d 521, 522 [1st Dept 2004]).

"The 'reasonableness' of compensation must be measured against relevant precedent of comparable cases" (*Kayes v Liberati*, 104 AD3d 739, 741 [2d Dept 2013]; *see Urbina v 26 Ct. St. Assoc., LLC*, 46 AD3d 268, 275 [1st Dept 2007]; *Reed v City of New York*, 304 AD2d 1, 7 [1st Dept 2003]; *Halsey v New York City Tr. Auth.*, 114 AD3d 726, 727 [2d Dept 2014]). Although prior damage awards in cases involving similar injuries are not binding upon the courts, they "guide and enlighten them with respect to determining whether a verdict in a given case constitutes reasonable compensation" (*Miller v Weisel*, 15 AD3d 458, 459 [2d Dept 2005]; *see Garcia v CPS 1 Realty, L.P.,* 164 AD3d at 659 [2d Dept 2018]; *Vainer v DiSalvo*, 107 AD3d 697, 698-699 [2d Dept 2013]; *Reed v City of New York*, 304 AD2d at 7). What constitutes "reasonable compensation" must be assessed with due regard to the "circumstances presented" (*Luna v New York City Tr. Auth.*, 116 AD3d 438, 438 [1st Dept 2014]).

The court concludes that the plaintiff is entitled to an award of $80,000.00 for past pain and suffering (*see Garber v Lynn,* 79 AD3d 401, 401 [1st Dept 2010] [increasing award to $90,000 where plaintiff suffered severe pain, swollen and bleeding gums, and infection of the jaw bone necessitating nearly 15 implants and 14 crowns to restore the upper mouth and nearly seven implants to restore lower mouth]; *Trindade v Rock,* 2024 NY Slip Op 32833[U], *4 [Sup Ct, NY County 2024] [holding that $70,000 was a reasonable award where plaintiff sustained frequent infections, required six implants, and a full reconstruction]; *Bustos v Rock*, 2025 NY Slip Op 30466[U], *4 [Sup Ct, NY County 2025] [holding that $70,000 was a reasonable award where plaintiff had constant infections, needed at least six implants in his upper mouth, and removal and replacement of implants in lower mouth]). The court also notes that several representative cases were decided between 20 and 30 years ago, which, upon taking inflation and other economic factors into account, would require an upward revision to reflect a reasonable award in 2025 (*see Altman-Fider v Gershon*, 2002 NY Slip Op 30122[U], *5 [Sup Ct,

NY County 2002] [holding that an award of $40,000 for past pain and suffering was consistent with several other tooth injury cases]; *Classen v Ashkinazy*, 258 AD2d 863, 865 [3d Dept 1999][affirming past pain and suffering award of $40,000 to plaintiff with failed lower dental implant]; *Teller v Anzano*, 263 AD2d 647, 650 [3d Dept 1999] [modifying judgment to allow $35,000 past pain and suffering award in personal injury action involving damage to two front teeth]; *Kushner v Mollin*, 181 AD2d 866, 867 [2d Dept 1992] [affirming $40,000 for past pain and suffering where plaintiff lost six upper teeth]). There was no testimony as to the extent to which the plaintiff is likely to experience pain and suffering in the future, but only testimony that she will need future work when her current bone grafts wear out. Thus, the court declines to make an award for future pain and suffering.

The court concludes that the plaintiff is entitled to an award of $84,500.00 for her past expenses, and $102,000.00 for her future expenses, in accordance with the testimony adduced by the plaintiff and her expert, Dr. Rubin, for a total of $186,500.00 to compensate her for her out-of-pocket expenses.

New York does not recognize an independent cause of action for punitive damages; nonetheless, a demand or request for punitive damages is viable when attached to a substantive cause of action (*see Randi A. J. v Long Is. Surgi-Center*, 46 AD3d 74, 80 [2d Dept 2007]). While a demand for punitive damages is often raised in terms of conduct that is intentional, malicious, and done in bad faith, conduct warranting an award of punitive damages "need not be intentionally harmful but may consist of actions which constitute willful or wanton negligence or recklessness" (*id*. at 80-81; *see Home Ins. Co. v Am. Home Prods. Corp.*, 75 NY2d 196, 204 [1990]). Moreover, punitive damages are proper where there is sufficient evidence of reprehensible conduct evincing a gross indifference to patient care (*see Brown v LaFontaine-Rish Med. Assoc.*, 33 AD3d 470, 471 [1st Dept 2006]; *Graham v Columbia Presbyt. Med. Ctr.*, 185 AD2d 753, 754 [1st Dept 1992]).

The court concludes that the defendants' behavior and the practices that they engaged in, including provision of treatment by unlicensed personnel, are sufficient to warrant an award of punitive damages. Such an award is appropriate to deter future reprehensible conduct by the defendants and others similarly situated (*see Garber v Lynn*, 79 AD3d 401, 403 [1st Dept 2010]; *Randi A. J. v Long Is. Surgi-Center*, 46 AD3d 74, 81 [2d Dept 2007]). As such, the court concludes that the plaintiff is entitled to an award of punitive damages in the amount of $60,000.00.

IV. CONCLUSION

In light of the foregoing, it is,

ORDERED that the Clerk of the court shall enter judgment in favor of the plaintiff, Ana Cisneros, 212-29 Hillside Avenue, Apartment 6DW, Queens Village, New York 11427 and

(a) against the defendants Dr. Alexander Rock, 5 Commack Road, Commack, New York 11725, Dr. Robert Winegarden, 401 East 34th Street, New York, New York 10016, and Robert F. Winegarden, D.D.S., P.C, 57 West 57th Street, Suite 610, New York, New York 10019, jointly and severally, in the sum of $266,500.00, as and for compensatory damages, with statutory interest at 9% per annum from September 9, 2021, and

(b) against the defendants Dr. Alexander Rock, Dr. Robert Winegarden, and Robert F. Winegarden, D.D.S., P.C, jointly and severally, in the additional sum of $60,000.00, as and for punitive damages, with statutory interest at 9% per annum from September 9, 2021.

This constitutes the Decision and Order After Inquest of the court.

9/26/2025
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**