

NOTIFY

35

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

ASPEN DENTAL MANAGEMENT, INC.,

Defendant.

C.A. No. 2184-CV-02823-BLS2

FINAL JUDGMENT BY CONSENT

The Court has reviewed the Commonwealth's Assented-to Motion for Entry of Final Judgment by Consent and the attached Consent and Exhibits. The Court finds that it has subject matter jurisdiction over this matter and personal jurisdiction over the defendant, Aspen Dental Management, Inc. ("ADMI"), and finds that entry of this Final Judgment by Consent ("Consent Judgment") is in the interest of justice.

Accordingly, good cause being shown, IT IS ORDERED THAT:

I. Definitions

1. The following terms shall have the following definitions:

a. "ADMI" means "Aspen Dental Management, Inc." and any of its subsidiaries, divisions, affiliates, agents, employees, servants, attorneys, officers, successors, and assigns, whether by sale of assets, merger, or otherwise.

b. "Advertisement" means any advertising or marketing communication televised, broadcast, presented, distributed or disseminated in Massachusetts, including, without

Notice
sent
1-5-22

JUDGMENT ENTERED ON DOCKET Jan 5, 2023
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 63(b)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

limitation, any advertising or marketing communication originating outside Massachusetts, which may reasonably be expected to be seen, read or heard in the Commonwealth.

c. The term “Clear and Conspicuous” (including the term “Clearly and Conspicuously”) means that the material representation being disclosed is of such size, color, contrast or audibility and is so presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed. Without limiting the requirements of the preceding sentence: Any disclosure that contradicts or materially alters the meaning of the term, statement or claim to which it refers is not clear and conspicuous unless:

i. The disclosure is presented contemporaneously with or immediately following the primary claim and the disclosure is not separated from the primary claim by any text, audio, or other content, such that, for example, if the claim is made online, the disclosure must be visible on the same webpage, directly following or below the claim, without the need to click on a hyperlink to view the disclosure;

ii. The disclosure is in the same medium as the primary claim, such that, for example, a written disclosure must accompany a written claim and an oral disclosure must accompany an oral claim; and

iii. The disclosure is of similar prominence as the primary claim, such that, for example, a written disclosure must have the same typeface and background as the primary claim and must appear in type which is at least one-third the size of the largest type of information in the primary claim, and an oral disclosure must have the same volume and speed (as uninterrupted or distracted from by other sounds, images or text) as the primary claim. In no event may any written disclosure appear in less than eight-point type.

d. “Date of Entry” means the date this Consent Judgment is entered.

e. "Mailing" means any mailing, notice, letter and/or check that ADMI is required to send by this Consent Judgment.

f. "Massachusetts Consumer" means an individual who receives (or received) dental services at a Massachusetts Office.

g. "Massachusetts Office" means any dental office operating in Massachusetts (i) using the name Aspen Dental or (ii) operated by a Massachusetts Practice.

h. "Massachusetts Practice" means any individual or entity (whether a Professional Corporation, Professional Limited Liability Company, or otherwise) that (i) provides dental services in Massachusetts using the name Aspen Dental or (ii) has an agreement with ADMI related to the practice's provision of dental services in Massachusetts.

i. "New Patient Exam" means any dental examination (of whatever nature, whether comprehensive, limited, problem-focused or otherwise) that (a) took place in a Massachusetts Office, and (b) took place between September 12, 2009 and the Date of Entry and (c) was provided to a Massachusetts Consumer who was receiving a dental examination at an Aspen Dental-branded practice, wherever located, for the first time in his or her lifetime.

j. "New Patient X-Ray" means a dental x-ray (of whatever nature) that (a) took place in a Massachusetts Office, and (b) took place between September 12, 2009 and the Date of Entry, and (c) was provided to a Massachusetts Consumer who was receiving dental x-rays at an Aspen Dental-branded practice, wherever located, for the first time in his or her lifetime.

II. Payments by ADMI

2. Within fourteen (14) calendar days after the Date of Entry, ADMI shall pay \$2,750,000 to the Commonwealth, including for the costs of the investigation and litigation, of

which \$2,500,000 shall be deposited into the General Fund and \$250,000 shall be for a consumer relief fund. This payment shall be made by electronic fund transfer to the Office of the Massachusetts Attorney General to an account identified by the Commonwealth. The Attorney General may expend and distribute funds from the consumer relief fund, in her sole discretion and in amounts she deems appropriate, to provide restitution or other relief to individuals who at any time since September 12, 2009 were Massachusetts Consumers and who the Attorney General in her sole discretion determines suffered an otherwise unremediated ascertainable loss or other cognizable harm as a result of the conduct of Defendant. If any amounts remain in the consumer relief fund, the Attorney General shall at a time chosen in her sole discretion direct any residue to the Local Consumer Aid Fund maintained pursuant to G.L. c. 12, § 11G.

3. In addition to the payments described in paragraph 2 above, ADMI shall make payments totaling at least \$750,000 as described in paragraphs 4, 5 and 8 below.

4. Within ninety (90) calendar days after the Date of Entry, ADMI shall refund (a) to each Massachusetts Consumer who had no Massachusetts insurance coverage and paid any amount for a New Patient Exam and/or New Patient X-Ray (i) by credit card by transmitting the amounts paid to the credit of that credit card account, (ii) by cash, check or otherwise (or where the original payment was by credit card but the transmission required by section (i) cannot be accomplished because the credit card account is closed or otherwise does not accept the refund transmission) by sending by first class mail a check in the amounts paid by that Massachusetts Consumer for that service or services. ADMI shall also send to each such Massachusetts Consumer by first class mail to the last known address of the Massachusetts Consumer a letter in the form attached hereto (A) as Exhibit A if ADMI successfully makes the refund transmission required by section (i) with the letter to be sent within three (3) business days of the successful

refund transmission or (B) as Exhibit B if ADMI is sending a check pursuant to subparagraph (a)(ii) in which circumstances the letter shall be sent with the check.

5. Within ninety (90) calendar days after the Date of Entry, ADMI shall refund (a) to each Massachusetts Consumer who paid any amount for an oral cancer screening since December 22, 2014 (i) by credit card by transmitting the amounts paid to the credit of that credit card account, (ii) by cash, check or otherwise (or where the original payment was by credit card but the transmission required by section (i) cannot be accomplished because the credit card account is closed or otherwise does not accept the refund transmission) by sending by first class mail a check in the amounts paid by that Massachusetts Consumer for that service or services. ADMI shall also send to each such Massachusetts Consumer by first class mail to the last known address of the Massachusetts Consumer a letter in the form attached hereto (A) as Exhibit C if ADMI successfully makes the refund transmission required by section (i) with the letter to be sent within three (3) business days of the successful refund transmission or (B) as Exhibit D if ADMI is sending a check pursuant to subparagraph (a)(ii) in which circumstances the letter shall be sent with the check.

6. Within one hundred twenty (120) days after the Date of Entry, ADMI shall submit to the Office of the Attorney General a report signed by a corporate officer attesting that it has performed a reasonably diligent review of its records of payments by Massachusetts Consumers and complied fully with its obligations under paragraphs 4-5.

7. No later than six (6) months after the Date of Entry, ADMI shall submit to the Office of the Attorney General a signed report attesting to (i) the total amounts of credit card refund transmissions in accordance with paragraphs 4-5 that were received by consumers and (ii)

the total amount of all checks issued in accordance with paragraphs 4-5 that were cashed or deposited.

8. To the extent that the aggregate amount of credit card refund transmissions and checks issued in accordance with paragraphs 4-5 that were cashed is less than \$750,000, ADMI shall within fourteen (14) calendar days of its submission of the report described in paragraph 7, pay such difference to the Massachusetts Attorney General's Office. The Attorney General may expend and distribute the payment to her Office in her sole discretion and in amounts she deems appropriate, and for any purpose allowed by law, including but not limited to distributing funds as described in paragraph 2 of this Consent Judgment.

9. Within thirty (30) calendar days of ADMI receiving any Mailing returned by the U.S. Postal Service because the mailing address was incorrect, ADMI shall have made reasonable efforts to identify the intended recipient's correct address and resend such Mailing, including, but not limited to, resending any Mailing to any forwarding address provided by the U.S. Postal Service or provided by an address research firm, which may be an online service retained by ADMI to obtain an updated address for any person whose Mailing is returned by the U.S. Postal Service without a forwarding address.

III. Injunction

10. For twenty (20) years from the Date of Entry, ADMI and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, are enjoined from violating G.L. c. 93A, § 2 by any of the following:

a. Engaging in, recommending, disseminating, and/or placing any Advertisement as follows:

i. Advertisements that state or imply that any service or product at a Massachusetts office is free unless (1) such service or product is provided without any charge to all patients who seek it without exception or limitation, or (2) the Advertisement Clearly and Conspicuously discloses any exceptions, reductions and/or limitations on the offer;

ii. Advertisements for dentures or full dentures at or starting at \$299, \$399 or any other price, without Clear and Conspicuous disclosure, if applicable, that the offer is “per arch,” is limited to replacement dentures, or is otherwise limited;

iii. Advertisements referencing any guarantee without Clear and Conspicuous disclosure of (1) the nature and extent of the guarantee, including for the denture money back guarantee that it covers the cost of dentures only and not associated services; (2) the duration of the guarantee; (3) the manner in which the guarantor will perform, including whether a refund, repair or replacement is offered, and what anyone claiming under the guarantee must do in order to fulfill the guarantee, for example, that the treating dentist may require the patient to try readjustment or realigning before fulfilling the guarantee if that is the case; and (4) the identity of the guarantor;

iv. Advertisements stating or implying “no hidden fees,” “no surprises” or language to a similar effect, unless all Advertisements that describe a price of a product or service Clearly and Conspicuously disclose the full range of fees and any other reasonably foreseeable additional fees for every product or service specifically referenced in the Advertisement;

v. Advertisements stating, implying, or suggesting that “Aspen Dental” or any Massachusetts Practice works with or accepts “all insurance” unless either: (1) the Massachusetts Practice accepts coverage provided by the MassHealth program, or (2) the

Advertisements Clearly and Conspicuously disclose that “Aspen Dental” and the Massachusetts Practice do not accept MassHealth coverage (to the extent the Advertisements are specifically aimed at Massachusetts residents) or that “Aspen Dental” and the Massachusetts Practice do not accept Medicaid coverage generally (to the extent the Advertisements are aimed more broadly than just at Massachusetts residents but may reasonably be expected to be seen, heard, or read by Massachusetts residents).

b. Offering or providing training to any Massachusetts Practice to engage in, directing or causing them to engage in, or facilitating any communication that an oral cancer screening adjunct is recommended or “recognized” by the “American Dental Association” or “ADA”;

c. Communicating or threatening to communicate to any person information about a debt which is known to ADMI to be false including, without limitation, (1) the failure to communicate that a disputed debt is disputed and (2) forwarding debts to collection agencies for balances not actually owed, such as for services advertised as free.

IV. Release

11. Upon entry of the Consent Judgment and following full payment of the amount due under this Consent Judgment, the Massachusetts Attorney General’s Office shall release and discharge ADMI from all civil claims that could have been brought by the Attorney General’s Office based on the conduct alleged in the Complaint filed against ADMI under the Consumer Protection Act, G. L. 93A, §2, or common law claims, including those concerning unfair, deceptive, or fraudulent trade practices. Nothing contained in this paragraph shall be construed to limit the ability of the Massachusetts Attorney General’s Office to enforce the obligations that ADMI has under this Consent Judgment. For the avoidance of doubt, the Attorney General’s

Office shall not claim any further violation of the Assurance of Discontinuance dated December 22, 2014 based on the allegations in the Complaint.

12. This Consent Judgment resolves only the allegations and claims raised in the Complaint filed against ADMI and does not resolve and shall not be deemed a waiver of any other actual or potential claims the Commonwealth may have against ADMI or that ADMI may have against any person other than the Commonwealth. It does not resolve any claims by any party other than the Commonwealth. This Consent Judgment similarly does not resolve any actual or potential claims by the Commonwealth against any other entity

V. Miscellaneous

13. ADMI acknowledges that each of the paragraphs of the above Injunction and this Consent Judgment contain clear and unequivocal commands.

14. Promptly after the Date of Entry, ADMI shall provide actual notice of the Consent Judgment to the Massachusetts Practices by electronic mail and shall further confirm with the Attorney General's Office that actual notice was provided to each Massachusetts Practice.

15. ADMI must create and maintain, for five (5) years after the date of creation, records necessary to demonstrate full compliance with each provision of this Consent Judgment, including

- a. all submissions to the Massachusetts Attorney General's Office,
- b. all Advertisements;
- c. records sufficient to show the Massachusetts Consumers billed and/or charged for new patient examinations and/or x-rays and whether such patients had insurance at the time of the examination and/or x-ray (and if so, which insurance);

d. the content of training of Massachusetts Practices and form documents created or made available by ADMI relating to oral cancer screening adjuncts; and

e. all communications to any third-party about any alleged debt of a Massachusetts Consumer.

16. ADMI shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding the implementation of the terms contained within this Consent Judgment.

17. In accordance with the attached Consent, ADMI has waived all rights of appeal. ADMI has also waived the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure with respect to the entry of this Consent Judgment.

18. This Consent Judgment represents the entire agreement between the Commonwealth and ADMI concerning the matters addressed herein.

19. Nothing in this Consent Judgment shall require the Commonwealth, the Office of the Attorney General or any individual (including, but not limited to, anyone that receives a payment from ADMI) to pay any amount to ADMI.

20. Neither this Consent Judgment, nor any part thereof, including, without limitation, any statements or notices required by this Consent Judgment, shall be treated or construed as an admission of liability or wrongdoing, admitted into evidence against ADMI or used for any other purpose in any proceeding, except in a proceeding to enforce the terms of this Consent Judgment. ADMI does not admit or concede any actual or potential fault, wrongdoing, liability or violation of law in connection with any facts or claims that have been or could have been alleged against it.

21. At least twenty-one (21) calendar days prior to commencing an action for violation of this Consent Judgment, the Attorney General will notify ADMI in writing of such failure to comply; provided, however, that if in the Attorney General's sole discretion the failure to comply threatens the health or safety of the citizens of Massachusetts, the Attorney General need not provide such notice.

22. Neither this Consent Judgment, nor any part thereof, including, without limitation, any statements or notices required by the foregoing paragraph or any other paragraph of this Consent Judgment, shall be construed as providing ADMI the right to cure any violation of this Consent Judgment or any right to receive notice of violation beyond the notice in advance of suit provided by paragraph 21.

23. Any violation of this Consent Judgment shall be punishable by contempt proceedings, or as otherwise provided by law.

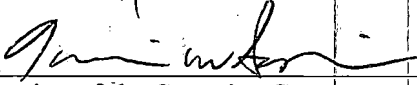
24. The provisions of this Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

25. Any notices or communications required to be transmitted between ADMI and the Commonwealth pursuant to this Consent Judgment shall be provided in writing by first class mail, postage prepaid, and by electronic mail (where provided) to the parties or successors as follows, unless otherwise agreed in writing.

To the Commonwealth of Massachusetts	To ADMI
<p>Ethan Marks, Esq. Assistant Attorney General Office of the Attorney General One Ashburton Place Boston, MA 02108 Ethan.W.Marks@mass.gov</p>	<p>Aspen Dental Management, Inc. Attention: General Counsel 281 Sanders Creek Parkway East Syracuse, New York, 13057</p> <p>With A Copy To:</p> <p>Aspen Dental Management, Inc. Attention: Chief Legal Officer 311 N. Green Street, 17th Floor Chicago, Illinois 60607</p>

26. This Court shall retain jurisdiction of this case.

SO ORDERED, this 3rd day of January, 2023.


Justice of the Superior Court
(Salinger, J.)

CONSENT OF ASPEN DENTAL MANAGEMENT, INC.


Aspen Dental Management, Inc. ("ADMI"), through its officer signing below, admits to the continuing personal jurisdiction of the Superior Court over ADMI and the subject matter of this action, and consents to the entry of the Final Judgment by Consent (the "Consent Judgment") regarding the claims between the Commonwealth and ADMI without trial or adjudication of any issue of fact or law. In so consenting, the officer of ADMI signing below certifies that he/she has personally read and understands the Consent Judgment and represents that he/she is authorized to enter into this settlement on behalf of ADMI. The attorney for ADMI signing below approves this Consent Judgment as to form on behalf of ADMI.

ADMI waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure with respect to the claims between the Commonwealth and ADMI. The officer signing below on behalf of ADMI understands that any violation of this Consent Judgment may result in contempt proceedings, penalties pursuant to M.G.L. Chapter 93A, and any additional penalties and sanctions as are provided by law.

Neither this consent nor any part thereof shall be treated or construed as an admission of liability or wrongdoing or admitted into evidence or used for any other purpose except in a proceeding to enforce the terms of this Consent Judgment.

Assented to, waiving all rights of appeal:

ADMI

By: 
Richard Parr, Chief Legal Officer
Dated: December 20, 2022

Approved as to form:

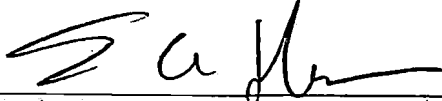
By: 
Eric A. Dubelier, Reed Smith LLP, Admitted Pro Hac Vice
Dated: December 20, 2022

EXHIBIT A

[Letterhead of ADMI]

[DATE]

[CONSUMER'S NAME AND ADDRESS]

Re: Payment pursuant to consent judgment

Dear [INSURED NAME]:

Under the terms of a consent judgment with the Office of Massachusetts Attorney General Maura Healey, you have received a refund on _____, 2023 in the amount of \$ _____ on your credit card in connection with your having paid with that card for a new patient examination and/or x-ray at a Massachusetts Aspen Dental office. You are entitled to that refund without any further action or obligation.

If you have any questions, please call (8__) __ - ____.

Very truly yours,

[ADMI REPRESENTATIVE]

Enclosure

EXHIBIT B

[Letterhead of ADMI]

[DATE]

[CONSUMER'S NAME AND ADDRESS]

Re: Payment pursuant to consent judgment

Dear [INSURED NAME]:

Under the terms of a consent judgment with the Office of Massachusetts Attorney General Maura Healey, you are receiving the enclosed check for additional amounts due to you in connection with your having paid for a new patient examination and/or x-ray at a Massachusetts Aspen Dental office. You are entitled to the enclosed check without any further action or obligation.

If you have any questions, please call (8__) __ - ____.

Very truly yours,

[ADMI REPRESENTATIVE]

Enclosure

EXHIBIT C

[Letterhead of ADMI]

[DATE]

[CONSUMER'S NAME AND ADDRESS]

Re: Payment pursuant to consent judgment

Dear [INSURED NAME]:

Under the terms of a consent judgment with the Office of Massachusetts Attorney General Maura Healey, you have received on _____, 2023 a refund in the amount of \$_____ on your credit card in connection with your having paid with that card for an oral cancer screening at a Massachusetts Aspen Dental office. You are entitled to that refund without any further action or obligation.

If you have any questions, please call (8__) __ - ____.

Very truly yours,

[ADMI REPRESENTATIVE]

Enclosure

EXHIBIT D

[Letterhead of ADMI]

[DATE]

[CONSUMER'S NAME AND ADDRESS]

Re: Payment pursuant to consent judgment

Dear [INSURED NAME]:

Under the terms of a consent judgment with the Office of Massachusetts Attorney General Maura Healey, you are receiving the enclosed check for additional amounts due to you in connection with your having paid for an oral cancer screening at a Massachusetts Aspen Dental office. You are entitled to the enclosed check without any further action or obligation.

If you have any questions, please call (8__) __-__.

Very truly yours,

[ADMI REPRESENTATIVE]

Enclosure