

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
DOCKET NO.

21-0435

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

DR. MOUHAB Z. RIZKALLAH DDS MSD PC,

THE BRACES PLACE OF LAWRENCE LLC,

and

MOUHAB Z. RIZKALLAH, DDS,

Defendants.

COMPLAINT

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2021 FEB 25 1 P 12:35
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

INTRODUCTION

1. The Commonwealth of Massachusetts brings this action against Defendants Dr. Mouhab Z. Rizkallah DDS MSD PC (the "Rizkallah PC") and The Braces Place of Lawrence LLC ("The Braces Place") (together, the "Rizkallah Practice Defendants"); and Mouhab Z. Rizkallah, DDS ("Dr. Rizkallah") to recover payments made by the Massachusetts Medicaid program ("MassHealth") as a result of false claims for payment that the Defendants submitted and/or caused to be submitted to MassHealth from at least November 2013 to the present (the "relevant time period"). During the relevant time period, Defendants instituted a series of illegal policies and practices with the intent to defraud MassHealth.

2. Medicaid is a joint federal-state program that provides health care benefits for certain eligible individuals, including low-income children, seniors, and people with disabilities. The federal Medicaid statute sets forth the minimum requirements for state Medicaid programs to qualify for federal funding. 42 U.S.C. §§ 1396a *et seq.* The federal portion of each state's Medicaid budget, known as the Federal Medical Assistance Percentage, is based on the state's *per capita* income compared to the national average. *Id.* § 1396d(b). The remainder of the Medicaid budget is funded by the state.

3. MassHealth, through its providers, provides dental treatment to its members, including orthodontic treatment services to some of its members. Orthodontics is a specialty within dentistry and comprehensive orthodontic treatment is a subset of orthodontic services.

4. Today, through the Rizkallah Practice Defendants, Dr. Rizkallah owns and operates orthodontic practices in six different locations in Massachusetts. All six orthodontic practices currently do business as "The Braces Place."

5. No later than November 2013, Dr. Rizkallah and the Rizkallah Practice Defendants instituted a policy and practice of billing MassHealth for at least one custom-fitted mouth guard for sports for each MassHealth member for whom Dr. Rizkallah and/or one of the Rizkallah Practice Defendants obtained prior authorization for comprehensive orthodontic treatment.

6. This policy and practice violates MassHealth regulations because MassHealth pays for custom-fitted sports mouth guards only if certain criteria are met, including but not limited to the member being engaged in a contact sport.

7. The Rizkallah Practice Defendants have a practice of billing MassHealth for custom-fitted mouth guards for sports even when the MassHealth member as to whom the mouth guard is billed is either not provided with a mouth guard at all or provided with a mouth guard that

is not eligible for payment by MassHealth. This practice violates MassHealth regulations because it results in the Rizkallah Practice Defendants billing MassHealth for services not rendered.

8. No later than February 2, 2014, Dr. Rizkallah and the Rizkallah Practice Defendants operating Dr. Rizkallah's orthodontic practice in Lowell had instituted a policy and practice of leaving MassHealth patients receiving comprehensive orthodontic treatment in braces until the Rizkallah Practice Defendants had been paid a certain minimum amount by MassHealth for the patient's comprehensive orthodontic treatment.

9. This policy and practice violates MassHealth regulations to the extent that it requires MassHealth members to be in braces longer than medically necessary and results in the submission of claims for payment for medically unnecessary periodic orthodontic treatment visits.

10. No later than May 2015, Dr. Rizkallah and the Rizkallah Practice Defendants had instituted a policy and practice of only partially banding MassHealth members' teeth at the beginning of comprehensive orthodontic treatment regardless of medical necessity.

11. This policy and practice violates MassHealth regulations because it extends the overall comprehensive orthodontic treatment time period for MassHealth members and results in the submission of claims for payment for medically unnecessary periodic orthodontic treatment visits, except for those members for whom partial banding is medically indicated.

12. No later than December 3, 2018, Dr. Rizkallah and the Rizkallah Practice Defendants had begun to engage in the practice of partially banding MassHealth members as to whom MassHealth coverage of comprehensive orthodontic services had already been denied (or was expected to be denied) and then presenting evidence of the member's partially banded mouth to MassHealth, via DentaQuest, in support of a request for prior approval for Dr. Rizkallah and the Rizkallah Practice Defendants to "continue" comprehensive orthodontic treatment for the

member as described in section 16.3 of the Office Reference Manual for the MassHealth Dental Program dated July 6, 2020 (“Office Reference Manual”).

13. This practice violates MassHealth regulations because the “continuation of care” prior approval request process described in section 16.3 of the Office Reference Manual is only supposed to be used if a member is already receiving comprehensive or interceptive orthodontic treatment and is transferring from another provider and/or state Medicaid program or other insurer.

14. This practice also violates MassHealth regulations because by submitting evidence that certain MassHealth members were partially banded and omitting material information concerning when they were partially banded and by whom, Dr. Rizkallah knowingly misled MassHealth in order to obtain prior approval to provide and bill to MassHealth comprehensive orthodontic treatment services for MassHealth members ineligible for such services based on the clinical standards for medical necessity described in Appendix D of the Dental Manual and the criteria for determining whether a service is “medically necessary” set out in 130 C.M.R. 450.204.

15. Accordingly, the Commonwealth brings this action to recover civil penalties, restitution, and other compensation from the Rizkallah Practice Defendants and Dr. Rizkallah to pay for the harms caused by their flagrant violations of Medicaid regulations concerning comprehensive orthodontic treatment and custom-fitted mouth guards for sports.

JURISDICTION AND VENUE

16. The Attorney General has authority to bring this action under G.L. c. 12 §§ 5, 5C, and 10; and G.L. c. 118E § 44.

17. This Court has jurisdiction over this action under G.L. c. 12 §§ 5C, 10; G.L. c. 118E § 44; and G.L. c. 223A §§ 2, 3.

18. Venue is proper in Suffolk County under G.L. c. 223 § 5; G.L. c. 12 § 5C; and G.L. c. 118E § 45.

PARTIES

19. The Plaintiff is the Commonwealth of Massachusetts, a sovereign state and body politic duly organized by law and represented by the Attorney General of the Commonwealth, who brings this action in the public interest and on behalf of the Commonwealth and its citizens and taxpayers.

20. Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC is a professional corporation, duly organized and existing under the laws of the Commonwealth of Massachusetts since November 2004, with its principal place of business at 30 College Avenue in Somerville, Massachusetts.

21. Defendant The Braces Place of Lawrence LLC is a domestic limited liability company, duly organized and existing under the laws of the Commonwealth of Massachusetts since March 2012, with its principal place of business at 30 Summer Street in Somerville, Massachusetts.

22. The Rizkallah Practice Defendants currently operate orthodontic practices which are enrolled as MassHealth providers in six different locations in Massachusetts, corresponding to six unique MassHealth Provider ID/Service Location (PIDSL) numbers.¹ These practices are located in Somerville, Boston, Lawrence, Lowell, Framingham and Lynn.

23. Defendant Dr. Mouhab Z. Rizkallah (“Dr. Rizkallah”) is a resident of the Commonwealth of Massachusetts. Dr. Rizkallah has been licensed to practice dentistry in Massachusetts since November 2001. Dr. Rizkallah first became a MassHealth provider in January 2004. Dr. Rizkallah later organized the Rizkallah Practice Defendants, each of which has enrolled

¹ A PIDSL is the MassHealth Provider ID/Service Location. It is a unique identifier specific to MassHealth. PIDSLs can be assigned to an individual or a practice (or both). A PIDSL is 10 characters, made up of a 9-digit base number and an alpha service location (e.g. 123456789A).

as a group practice MassHealth provider. Dr. Rizkallah has a majority ownership interest in both Rizkallah Practice Defendants and holds virtually all of the officer positions for each, either directly or through another Rizkallah Practice Defendant.

REGULATORY FRAMEWORK

MassHealth Dental Program Regulations

24. The regulations governing dental services (including orthodontic services) payable by MassHealth are set out at 130 CMR 420.000. In addition, all dental providers participating in MassHealth must comply with other applicable MassHealth regulations, including but not limited to 130 CMR 450.000 (Administrative and Billing Regulations). *See* 130 CMR 420.401(A).

25. The MassHealth agency pays for orthodontic treatment, subject to prior authorization, service descriptions and limitations as described in 130 CMR 420.431. Subchapter 6 of the MassHealth Dental Manual lists the Current Dental Terminology (CDT) codes for dentists, a description of those codes, and where indicated, prior-authorization requirements. 130 CMR 420.401(C).

26. Interceptive orthodontic treatment includes treatment of the primary and transitional dentition to prevent or minimize the development of a handicapping malocclusion and therefore, minimize or preclude the need for comprehensive orthodontic treatment. 130 C.M.R. 420.431(B)(2).

Comprehensive Orthodontic Treatment

27. Comprehensive orthodontic treatment includes a coordinated diagnosis and treatment leading to the improvement of a member's craniofacial dysfunction and/or dentofacial deformity which may include anatomical and/or functional relationship. 130 C.M.R. 420.431(B)(3). Comprehensive orthodontic treatment may utilize fixed and/or removable orthodontic appliances and may also include functional and/or orthopedic appliances. *Id.*

28. For comprehensive orthodontic treatment, the MassHealth agency pays once per member per lifetime, subject to prior authorization, and only if the member has a handicapping malocclusion and the member is younger than 21 years old at the time the provider seeks prior authorization and begins initial placement and insertion of orthodontic appliances. 130 CMR 420.431(A), (C)(3).

29. The MassHealth agency determines whether a malocclusion is handicapping based on clinical standards for medical necessity as described in Appendix D of the Dental Manual. 130 CMR 420.431(C)(3).

30. The authorization form for comprehensive orthodontic treatment is called the Handicapping Labio-Lingual Deviations (“HLD”) Index and treatment is authorized for cases with verified auto-qualifiers or HLD scores of 22 and above.

31. MassHealth’s dental contractor, DentaQuest, processes requests for prior authorization for comprehensive orthodontic treatment on behalf of MassHealth.

32. Upon initial approval of a request for prior authorization for comprehensive orthodontic treatment, the use of the following CDT codes is typically approved: one (1) unit of comprehensive orthodontic treatment (D8070, D8080, or D8090); and eight (8) units of periodic orthodontic treatment visits (D8670). Typically, the comprehensive orthodontic treatment code is billed first, when the patient is initially banded, followed by the periodic orthodontic treatment visits.

33. If a particular patient’s comprehensive orthodontic treatment cannot be completed within the time period covered by the number of pre-approved periodic orthodontic treatment visits, the treating provider may seek approval for “additional units.”

34. Likewise, if a particular patient's comprehensive orthodontic treatment can be completed with fewer than the number of pre-approved periodic orthodontic treatment visits, the treating provider should only submit claims for payment for the number of periodic orthodontic treatment visits needed to complete treatment.

35. A provider need not obtain prior approval in order for a claim for payment using CDT code D8680 for orthodontic retention (removal of appliances, construction and placement of retainer(s)) to be payable by MassHealth.

Continuation of Care

36. "Continuation of care" cases are cases in which the member is already receiving comprehensive or interceptive orthodontic treatment and is transferring from another provider with coverage under a state Medicaid program or another insurer. Cases submitted for prior approval for comprehensive orthodontic treatment under the continuation of care process do not have to meet the same prior approval criteria for comprehensive orthodontic care as initial requests for prior approval.

Mouth Guard for Sports

37. A claim for payment for a custom-fitted mouth guard for sports is payable by MassHealth only if: (1) the mouth guard is custom-fitted; and (2) the provider documents in the MassHealth member's record that (a) the member is engaged in a contact sport and (b) there is no other provision for the purchase of mouth guards for the sport's participants. The CDT code to be used when billing MassHealth for a custom-fitted mouth guard for sports is D9941.

38. A provider need not obtain prior approval before submitting a claim for payment using CDT code D9941.

MassHealth All Provider Regulations

39. In addition to the specific regulations governing specific provider types, all MassHealth providers are subject to the “all provider” regulations at 130 C.M.R. §§ 450.000 *et seq.*

40. The “all provider” regulations state, in relevant part, that every provider under contract with MassHealth agrees to comply with all laws, rules, and regulations governing MassHealth. 130 C.M.R. § 450.223(C)(1).

41. The “all provider” regulations also state that “[t]he MassHealth agency does not pay a provider for services that are not medically necessary” and identifies certain criteria for determining whether a service is “medically necessary,” including but not limited to there being “no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative *or less costly to the MassHealth agency.*” *See* 130 C.M.R. § 450.204 (emphasis added).

42. The “all-provider” regulations also state that every provider under contract with MassHealth certifies when submitting a claim for payment that “the information submitted in, with, or in support of the claim is true, accurate, and complete.” *Id.* § 450.223(C)(2)(e).

43. The MassHealth regulations governing overpayments state, “A provider must report in writing and return any overpayments to the MassHealth agency within 60 days of the provider identifying such overpayment or, for payments subject to reconciliation based on a cost report, by the date any corresponding cost report is due, whichever is later.” *Id.* § 450.235(B).

44. A provider is liable to the MassHealth agency for the full amount of any overpayments, or other monies owed under 130 C.M.R. §§ 450.000 *et seq.*, including but not

limited to 130 C.M.R. § 450.235(B), or under any other applicable law or regulation. *Id.* § 450.260(A).

STATEMENT OF FACTS

Background

45. MassHealth is the Massachusetts Medicaid program administered by the Executive Office of Health and Human Services. MassHealth is a joint federal-state medical assistance program that primarily serves the elderly, children, the disabled and low-income adults.

46. Throughout the relevant time period, Dr. Rizkallah has been under contract with MassHealth as an individual provider with the Massachusetts Medicaid program. Dr. Rizkallah signed the Provider Agreement between MassHealth and himself on or about December 3, 2003 and he became enrolled as a MassHealth provider in January 2004 under the individual provider #110011988A.

47. From May 9, 2005 to the present, the Rizkallah PC has been under contract with MassHealth as a group provider with the Massachusetts Medicaid program under the group provider #110070712A. Dr. Rizkallah signed the first Provider Agreement between MassHealth and the Rizkallah PC on or about May 3, 2005. The first MassHealth provider number established for the Rizkallah PC was for Dr. Rizkallah's orthodontic practice located in Somerville.

48. In March 2009, the Rizkallah PC established a second MassHealth Provider ID/Service Location (PIDSL) for the orthodontic practice in Boston under the provider #110070712B.

49. Today, the Rizkallah PC orthodontic practices in Somerville and Boston do business as "The Braces Place." In the past, the Rizkallah PC orthodontic practices in Somerville

and Boston have done business as “Orthodontics at Davis Square” and “Orthodontics at Ashmont Station,” respectively.

50. From May 23, 2012 to the present, The Braces Place has been under contract with MassHealth as a group provider with the Massachusetts Medicaid program under the provider #110092220A. The first MassHealth provider number established for The Braces Place was for the orthodontic practice located in Lawrence.

51. Since February 2012, The Braces Place has established three more PIDSLs with MassHealth for the orthodontic practices in Lowell, Framingham and Lynn, each of which do business as “The Braces Place.”²

52. Dr. Rizkallah’s individual provider contract with MassHealth requires him to comply with all state and federal laws, regulations, and rules applicable to participation in MassHealth.

53. The group provider contracts between each of the Rizkallah Practice Defendants and MassHealth require each of the Rizkallah Practice Defendants to comply with all state and federal laws, regulations, and rules applicable to participation in MassHealth.

54. Aline Pouv (“Ms. Pouv”) has been employed by Dr. Rizkallah and/or at least one of the Rizkallah Practice Defendants since at least June 2006. During her time working for Dr. Rizkallah, Ms. Pouv has held the title of “Office Manager” for at least two of Dr. Rizkallah’s orthodontic practices and has had responsibility for billing MassHealth for services rendered at these practices during the relevant time period.

² Lowell (#110092220B enrolled in October 2013); Framingham (#110092220C enrolled in September 2015); and Lynn (#110092220D enrolled in April 2018).

55. Juliana Masiello (“Ms. Masiello”) has been employed by Dr. Rizkallah and/or at least one of the Rizkallah Practice Defendants since at least January 2007. During her time working for Dr. Rizkallah, Ms. Masiello has held the title of “Corporate Manager” of The Braces Place.

56. Layza Gonzaga (“Ms. Gonzaga”) has been employed by Dr. Rizkallah and/or at least one of the Rizkallah Practice Defendants since at least May 2009. During her time working for Dr. Rizkallah, Ms. Gonzaga has held the title of “Office Manager” for at least one of Dr. Rizkallah’s orthodontic practices.

57. Crissabelle Ovalles (“Ms. Ovalles”) was employed by Dr. Rizkallah and/or at least one of the Rizkallah Practice Defendants from at least November 2013 through September 2016. During her time working for Dr. Rizkallah, Ms. Ovalles held the title of “Office Manager” for at least one of Dr. Rizkallah’s orthodontic practices.

58. Christine McDowell (“Ms. McDowell”) was employed by Dr. Rizkallah and/or at least one of the Rizkallah Practice Defendants from at least January 2014 through September 2014. During her time working for Dr. Rizkallah, Ms. McDowell held the title of “Office Manager” for at least one of Dr. Rizkallah’s orthodontic practices.

59. In or about November 2013, if not before, Dr. Rizkallah and the Rizkallah Practice Defendants standardized the policies and practices across all of the Rizkallah Practice Defendant locations in existence at the time with the intention of implementing these same policies and practices at each new Rizkallah Practice Defendant location.

60. Throughout the relevant time period, Dr. Rizkallah exercised control over the operations of the orthodontic offices operated by the Rizkallah Practice Defendants.

I. The Defendants violated state law by knowingly presenting or causing to be presented to MassHealth false claims for payment

A. False Claims for Payment for Mouth Guards for Sports (CDT code D9941)

61. By November 2013 at the latest, Dr. Rizkallah, the Rizkallah PC, and The Braces Place had instituted a policy and practice of billing MassHealth for at least one custom-fitted sports mouth guard for each MassHealth member for whom Dr. Rizkallah and/or one of the Rizkallah Practice Defendants had obtained prior authorization for comprehensive orthodontic treatment. The CDT code used by the Rizkallah Practice Defendants to bill MassHealth for custom-fitted sports mouth guards is D9941.

62. No later than May 2014, Dr. Rizkallah, the Rizkallah PC, and The Braces Place had instituted a policy and practice of billing MassHealth for as many as three custom-fitted sports mouth guards for each MassHealth member for whom Dr. Rizkallah and/or one of the Rizkallah Practice Defendants had obtained prior authorization for comprehensive orthodontic treatment.

63. The impetus for the institution of the policy and practice of billing MassHealth for as many as three custom-fitted sports mouth guards per MassHealth member was a request made by Dr. Rizkallah of Ms. Pouv in March 2014.

64. Between March 9, 2014 and August 24, 2014, Ms. Pouv, Ms. Masiello, and Ms. Gonzaga developed and implemented different versions of the Rizkallah Practice Defendants' policy and practice of billing MassHealth for at least one and as many as three custom-fitted sports mouth guards for each MassHealth member for whom Dr. Rizkallah and/or one of the Rizkallah Practice Defendants had obtained prior authorization for comprehensive orthodontic treatment.

65. At least one version of this policy and practice required the Rizkallah Practice Defendants to document in MassHealth members' patient charts the provision of a custom-fitted

mouth guard for sports regardless of whether a custom-fitted mouth guard for sports was actually provided to the MassHealth member.

66. In or about September 2014, Ms. Pouv explained to Ms. McDowell that the Rizkallah Practice Defendants were not expected to take impressions in order to provide MassHealth members with custom-fitted mouth guards for sports; that to the extent any mouth guard was to be provided to a MassHealth member, the type of mouth guard to be provided was not a custom-fitted mouth guard but rather, the type sold in retail stores; and that the Rizkallah Practice Defendants were to use CDT code D9941 to bill MassHealth for these mouth guards.

67. In or about September 2014, the price marked on the packaging for the mouthguards being given to MassHealth members by the Rizkallah Practice Defendants was \$9.99. At this time, Dr. Rizkallah instructed staff to cut the price off the mouthguard packaging before giving the mouth guard (still in its packaging and not custom-fitted in any way) to the MassHealth member.

68. Throughout the relevant time period, the MassHealth reimbursement rate for claims for payment using CDT code D9941 has been between \$85 and \$95.

69. Per Dr. Rizkallah's instructions, the Rizkallah Practice Defendants are to bill MassHealth for a custom-fitted mouth guard even when the MassHealth member as to whom it is being billed refuses the non-custom-fitted mouth guard typically given to MassHealth members.

70. Dr. Rizkallah had personal knowledge of the Rizkallah Practice Defendants' policy and practice of billing MassHealth for at least one and as many as three custom-fitted mouth guards for sports for each MassHealth patient receiving comprehensive orthodontic services.

71. Dr. Rizkallah also had personal knowledge of the MassHealth regulations which limit the circumstances under which MassHealth pays for a custom-fitted mouth guard for sports.

72. No later than December 11, 2014, Dr. Rizkallah knew of MassHealth limitations concerning payment for the fabrication of mouthguards specifically, noting the following in a patient chart: “Patient returns complaining that Mouthguard is scratch her cheek. Explained to patient that the Mouthguard was not actually supposed to be fabricated due to MH limitations. Offered patient to purchase Mouthguard if desired. Patient declined. Mouthguard taken and disposed of.”

73. On or about March 1, 2017, the same day MFD requested documents from two of the six Rizkallah Practice Defendant locations, the Rizkallah Practice Defendants began to include notations in MassHealth member charts indicating that the member was engaged in contact sports and/or that the mouth guard provided was custom-fitted in some way, at least for some patients. The mother of one such patient stated that her daughter, the patient, does not play any contact sports and that she was unaware of her daughter receiving a mouthguard from The Braces Place.

74. The Rizkallah Practice Defendants’ policy and practice of billing MassHealth for at least one and as many as three custom-fitted sports mouth guards for each MassHealth member for whom Dr. Rizkallah and/or one of the Rizkallah Practice Defendants had obtained prior authorization for comprehensive orthodontic treatment has caused the submission of false claims for payment for custom-fitted mouth guards for sports.

75. Between November 1, 2013 and the present, the Rizkallah Practice Defendants have billed and been paid by MassHealth for at least one custom-fitted sports mouth guard for at least 8,901 unique MassHealth members as to whom the Rizkallah Practice Defendants were also paid by MassHealth for comprehensive orthodontic treatment and/or periodic orthodontic treatment visits. For at least 1,896 of these 8,901 unique MassHealth members, the Rizkallah

Practice Defendants have billed and been paid by MassHealth for more than one custom-fitted sports mouth guard.

76. The total amount paid by MassHealth to the Rizkallah Practice Defendants for claims for payment for custom-fitted sports mouth guards for these 8,901 unique MassHealth members is at least \$1,089,482.63.

77. Many of these claims for payment were false in that many MassHealth members as to whom MassHealth was billed for a custom-fitted sports mouth guard did not receive a mouth guard at all while others received a mouth guard that would be ineligible for payment by MassHealth, even if the member had been engaged in a contact sport at the time the mouthguard was provided.

78. Once MassHealth received a credible allegation of fraud concerning Dr. Rizkallah and the Rizkallah Practices and the CDT billing code D9941, MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941.

B. False Claims for Medically Unnecessary Periodic Orthodontic Treatment Visits (CDT code D8670)

79. By February 2, 2014 at the latest, Dr. Rizkallah had instituted at least one policy designed to increase the amount of money to be collected from MassHealth in connection with providing comprehensive orthodontic services to MassHealth members, regardless of whether the services rendered in connection with collecting additional money from MassHealth were medically necessary.

80. Specifically, by February 2, 2014 at the latest, Dr. Rizkallah instructed the Rizkallah Practice Defendants operating the orthodontic practice in Lowell not to deband (remove braces from the teeth of) MassHealth members receiving comprehensive orthodontic treatment,

even if the member's treatment was complete, until the amount paid by MassHealth to the Rizkallah Practice Defendants operating the Lowell orthodontic practice for comprehensive orthodontic treatment and periodic orthodontic treatment visits (CDT code D8670) had met or exceeded \$3,500.00.

81. The Rizkallah Practice Defendants operating the orthodontic practice in Lowell followed Dr. Rizkallah's instructions. For 238 of 252 MassHealth members debanded at the Lowell orthodontic practice between February 2, 2014 and December 1, 2019 (94%), the Rizkallah Practice Defendants were paid at least \$3,500.00 for claims for payment submitted to MassHealth with an orthodontic CDT code (a code in the 8000s) before the member was debanded.

82. This policy and practice violates MassHealth regulations to the extent that it requires MassHealth members to be in braces longer than medically necessary and results in the submission of claims for payment for medically unnecessary periodic orthodontic treatment visits.

83. By September 2014 at the latest, Dr. Rizkallah and the Rizkallah Practice Defendants had instituted another policy designed to increase the amount of money to be collected from MassHealth in connection with providing comprehensive orthodontic services to MassHealth members.

84. Specifically, by September 2014 at the latest, Dr. Rizkallah and the Rizkallah Practice Defendants had instituted a policy of banding only the top row of a MassHealth member's teeth at the outset of comprehensive orthodontic treatment, regardless of whether there was any medical justification for delaying the full banding of the member's top and bottom rows of teeth.

85. This policy and practice violates MassHealth regulations to the extent that it requires MassHealth members to be in braces longer than medically necessary and results in the submission of claims for payment for medically unnecessary periodic orthodontic treatment visits.

86. All claims for payment for periodic orthodontic treatment visits submitted by the Rizkallah Practice Defendants for dates of service occurring after a MassHealth member's comprehensive orthodontic treatment was completed constitute false claims because these periodic orthodontic treatment visits are not medically necessary.

87. Likewise, all claims for payment for periodic orthodontic treatment visits submitted by the Rizkallah Practice Defendants for dates of service on which the MassHealth member was only partially banded absent any medical justification for not fully banding the patient constitute false claims. In order for a service to be medically necessary and thereby payable by MassHealth, the service must be of a quality that meets professionally recognized standards of health care. *See* 130 C.M.R. 450.204(B). Delaying full banding of a patient absent any medical justification for doing so is not consistent with professionally recognized standards for orthodontic health care. Keeping a patient in braces for longer than medically necessary can cause harm to a patient's teeth and/or oral health.

C. False Claims for Services Provided to MassHealth Members Ineligible for Comprehensive Orthodontic Treatment (CDT codes D8080 and D8670)

88. By December 3, 2018 at the latest, Dr. Rizkallah and the Rizkallah Practice Defendants began to engage in the practice of submitting requests for prior authorization for comprehensive orthodontic treatment to MassHealth, via DentaQuest, for MassHealth members whose cases do not meet the criteria for MassHealth coverage of comprehensive orthodontic treatment services.

89. MassHealth will approve comprehensive orthodontic treatment only for a member who, prior to beginning comprehensive orthodontic treatment, has a verified auto-qualifying condition or an HLD score of 22 or above.

90. Also by December 3, 2018 at the latest, Dr. Rizkallah and the Rizkallah Practice Defendants began to engage in the practice of submitting requests for prior approval to “continue” comprehensive orthodontic treatment for certain MassHealth members as to whom Dr. Rizkallah’s original request for prior approval for comprehensive orthodontic treatment was denied, instead of appealing the denial of the original request.

91. “Continuation of care” cases are cases in which the member is already receiving comprehensive or interceptive orthodontic treatment and is transferring from another provider with coverage under a state Medicaid program or another insurer.

92. Cases submitted for prior approval for comprehensive orthodontic treatment pursuant to the continuation of care process do not have to meet the same prior approval criteria for comprehensive orthodontic care as initial requests for prior approval. For example, MassHealth may approve the continuation of comprehensive orthodontic treatment for a member who began comprehensive orthodontic treatment with another provider and whose HLD score is below 22 as a result of the comprehensive orthodontic treatment services already provided.

93. Following receipt of MassHealth’s denial of an original request for prior authorization for comprehensive orthodontic care, and without authorization from MassHealth, Dr. Rizkallah and the Rizkallah Practice Defendants have a practice of partially banding the MassHealth member’s teeth with only the top row of teeth typically being banded. Dr. Rizkallah then submits evidence of the MassHealth member’s partially banded mouth along with other documentation required for requests for prior approval to “continue” comprehensive orthodontic treatment.

94. In submitting these requests for prior approval to “continue” comprehensive orthodontic treatment, Dr. Rizkallah omits material information including but not limited to the

fact that he had already submitted a request for prior approval which had been denied and the circumstances under which the member's top teeth were banded. In so doing, Dr. Rizkallah knowingly misleads MassHealth into believing the member is transferring from another provider who was providing the member with comprehensive orthodontic treatment covered by a state Medicaid program or another insurer.

95. As a result of Dr. Rizkallah misrepresenting certain MassHealth members' cases as "continuation of care" cases, MassHealth has given Dr. Rizkallah and the Rizkallah Practice Defendants prior approval to bill certain CDT codes to MassHealth for the "continuation" of comprehensive orthodontic treatment for MassHealth members who never qualified for MassHealth coverage of comprehensive orthodontic treatment. Therefore, all claims for payment submitted to MassHealth by the Rizkallah Practice Defendants for which prior approval was obtained in this way are false.

CAUSES OF ACTION

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC – Count One
(False Claims in Violation of Massachusetts False Claims Act,
MASS, GEN. LAWS c. 12, § 5B(a)(1))

96. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-95 of this Complaint as if fully alleged herein.

97. From at least November 2013 to the present, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

98. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was

a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

99. As a result of the noncompliance, from at least November 2013 to the present, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC, either with actual knowledge or deliberate ignorance of or reckless disregard for the truth, submitted or caused to be submitted to MassHealth false claims for payment in violation of Mass. Gen. Laws c. 12, § 5B(a)(1).

100. These claims were false inasmuch as they were for services not rendered and/or not eligible for reimbursement because Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material to MassHealth's decision to issue payment for these claims.

101. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC.

102. By virtue of the false or fraudulent claims that Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC knowingly submitted and caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus civil monetary penalties.

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC – Count Two
(False Statements in Violation of MASS. GEN. LAWS c. 118E, §§ 40(1), 44)

103. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-102 of this Complaint as if fully alleged herein.

104. From at least November 2013 to the present, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

105. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

106. As a result of this noncompliance, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC, either with actual knowledge or in willful blindness, knowingly and willfully made or caused to be made false claims for payment from the MassHealth program, which constitute false statements or representations in violation of Mass. Gen. Laws c. 118E, § 40(1).

107. These claims were false because they were for services that were not provided and/or not eligible for reimbursement because Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material to payment.

108. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by

MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC.

109. By virtue of the false or fraudulent claims that Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC submitted or caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus the costs of investigation and litigation, in accordance with Mass. Gen. Laws c. 118E, § 44.

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC – Count Three
(Unjust Enrichment)

110. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-109 of this Complaint as if fully alleged herein.

111. If Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC had not impliedly misrepresented compliance with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, MassHealth would not have paid these claims.

112. By retaining monies received from its submission of false claims for payment, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC has retained money that is the property of the Commonwealth of Massachusetts and to which Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC is not entitled.

113. It is unfair and inequitable for Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC to retain revenue from payments from MassHealth that Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC obtained by violating applicable regulations and provider contracts.

114. As a consequence of the acts set forth above, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC has been unjustly enriched and is liable to pay such amounts, which are to be determined at trial, to Plaintiff Commonwealth of Massachusetts.

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC – Count Four
(Recovery of Overpayment, 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I))

115. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-114 of this Complaint as if fully alleged herein.

116. From at least November 2013 to the present, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

117. Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC submitted to MassHealth claims for payment that were not eligible for payment by MassHealth because of this noncompliance. MassHealth paid for those claims.

118. By virtue of Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC's submission to MassHealth of claims for payment in violation of applicable regulations, MassHealth made overpayments to Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC.

119. Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC is liable to repay to the Commonwealth of Massachusetts the amount received from these overpayments in an amount to be determined at trial.

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC – Count Five
(Breach of Contract)

120. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-119 of this Complaint as if fully alleged herein.

121. Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC breached its MassHealth provider contract from at least November 2013 to the present by making false claims for payment to MassHealth for services that were not provided and/or did not comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

122. From at least November 2013 to the present, Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC breached its MassHealth provider contract by failing to comply with all state and federal laws, regulations, and rules applicable to participation in the MassHealth program and submitting claims for payment for services that were not provided and/or did not comply with all state and federal laws, regulations, and rules applicable to MassHealth.

123. Each false claim submitted by Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC that was not in compliance with MassHealth rules and regulations constitutes a breach of Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC's MassHealth provider contract.

124. As a result of Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC's breach of its MassHealth provider contract, the Commonwealth has been damaged.

Defendant The Braces Place of Lawrence LLC – Count Six
(False Claims in Violation of Massachusetts False Claims Act,
MASS, GEN. LAWS c. 12, § 5B(a)(1))

125. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-124 of this Complaint as if fully alleged herein.

126. From at least November 2013 to the present, Defendant The Braces Place of Lawrence LLC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

127. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

128. As a result of the noncompliance, from at least November 2013 to the present, Defendant The Braces Place of Lawrence LLC, either with actual knowledge or deliberate ignorance of or reckless disregard for the truth, submitted or caused to be submitted to MassHealth false claims for payment in violation of Mass. Gen. Laws c. 12, § 5B(a)(1).

129. These claims were false inasmuch as they were for services not rendered and/or not eligible for reimbursement because Defendant The Braces Place of Lawrence LLC misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material to MassHealth's decision to issue payment for these claims.

130. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by

MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by Defendant The Braces Place of Lawrence LLC.

131. By virtue of the false or fraudulent claims that Defendant The Braces Place of Lawrence LLC knowingly submitted and caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus civil monetary penalties.

Defendant The Braces Place of Lawrence LLC – Count Seven
(False Statements in Violation of MASS. GEN. LAWS c. 118E, §§ 40(1), 44)

132. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-131 of this Complaint as if fully alleged herein.

133. From at least November 2013 to the present, Defendant The Braces Place of Lawrence LLC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

134. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

135. As a result of this noncompliance, Defendant The Braces Place of Lawrence LLC, either with actual knowledge or in willful blindness, knowingly and willfully made or caused to be made false claims for payment from the MassHealth program, which constitute false statements or representations in violation of Mass. Gen. Laws c. 118E, § 40(1).

136. These claims were false because they were for services that were not provided and/or not eligible for reimbursement because Defendant The Braces Place of Lawrence LLC misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material to payment.

137. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by Defendant The Braces Place of Lawrence LLC.

138. By virtue of the false or fraudulent claims that Defendant The Braces Place of Lawrence LLC submitted or caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus the costs of investigation and litigation, in accordance with Mass. Gen. Laws c. 118E, § 44.

Defendant The Braces Place of Lawrence LLC – Count Eight
(Unjust Enrichment)

139. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-138 of this Complaint as if fully alleged herein.

140. If Defendant The Braces Place of Lawrence LLC had not impliedly misrepresented compliance with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, MassHealth would not have paid these claims.

141. By retaining monies received from its submission of false claims for payment, Defendant The Braces Place of Lawrence LLC has retained money that is the property of the Commonwealth of Massachusetts and to which Defendant The Braces Place of Lawrence LLC is not entitled.

142. It is unfair and inequitable for Defendant The Braces Place of Lawrence LLC to retain revenue from payments from MassHealth that Defendant The Braces Place of Lawrence LLC obtained by violating applicable regulations and provider contracts.

143. As a consequence of the acts set forth above, Defendant The Braces Place of Lawrence LLC has been unjustly enriched and is liable to pay such amounts, which are to be determined at trial, to Plaintiff Commonwealth of Massachusetts.

Defendant The Braces Place of Lawrence LLC – Count Nine
(Recovery of Overpayment, 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I))

144. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-143 of this Complaint as if fully alleged herein.

145. From at least November 2013 to the present, Defendant The Braces Place of Lawrence LLC failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

146. Defendant The Braces Place of Lawrence LLC submitted to MassHealth claims for payment that were not eligible for payment by MassHealth because of this noncompliance. MassHealth paid for those claims.

147. By virtue of Defendant The Braces Place of Lawrence LLC's submission to MassHealth of claims for payment in violation of applicable regulations, MassHealth made overpayments to Defendant The Braces Place of Lawrence LLC.

148. Defendant The Braces Place of Lawrence LLC is liable to repay to the Commonwealth of Massachusetts the amount received from these overpayments in an amount to be determined at trial.

Defendant The Braces Place of Lawrence LLC – Count Ten
(Breach of Contract)

149. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-148 of this Complaint as if fully alleged herein.

150. Defendant The Braces Place of Lawrence LLC breached its MassHealth provider contract from at least November 2013 to the present by making false claims for payment to MassHealth for services that were not provided and/or did not comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

151. From at least November 2013 to the present, Defendant The Braces Place of Lawrence LLC breached its MassHealth provider contract by failing to comply with all state and federal laws, regulations, and rules applicable to participation in the MassHealth program and

submitting claims for payment for services that were not provided and/or did not comply with all state and federal laws, regulations, and rules applicable to MassHealth.

152. Each false claim submitted by Defendant The Braces Place of Lawrence LLC that was not in compliance with MassHealth rules and regulations constitutes a breach of Defendant The Braces Place of Lawrence LLC's MassHealth provider contract.

153. As a result of Defendant The Braces Place of Lawrence LLC's breach of its MassHealth provider contract, the Commonwealth has been damaged.

Defendant Mouhab Z. Rizkallah, DDS – Count Eleven
(False Claims in Violation of Massachusetts False Claims Act,
MASS, GEN. LAWS c. 12, § 5B(a)(1))

154. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-153 of this Complaint as if fully alleged herein.

155. From at least November 2013 to the present, the Rizkallah Practice Defendants failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

156. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

157. As a result of the Rizkallah Practice Defendants' noncompliance, from at least November 2013 to the present, Defendant Dr. Rizkallah, either with actual knowledge or deliberate ignorance of or reckless disregard for the truth, in his role as an owner of the Rizkallah Practice

Defendants and through his exercise of control over the operations of the orthodontic offices operated by the Rizkallah Practice Defendants, submitted or caused to be submitted to the MassHealth program false claims for payment in violation of Mass. Gen. Laws c. 12, § 5B(a)(1).

158. These claims were false inasmuch as they were for services not eligible for reimbursement because the Rizkallah Practice Defendants misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material as that term is defined in the Massachusetts False Claims Act and interpreted by the courts.

159. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by the Rizkallah Practice Defendants.

160. By virtue of the false or fraudulent claims that the Rizkallah Practice Defendants knowingly submitted and caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus civil monetary penalties.

Defendant Mouhab Z. Rizkallah, DDS – Count Twelve
(False Statements in Violation of MASS. GEN. LAWS c. 118E, §§ 40(1), 44)

161. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-160 of this Complaint as if fully alleged herein.

162. From at least November 2013 to the present, the Rizkallah Practice Defendants failed to comply with applicable regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for

comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, including 130 C.M.R. 420.000 and 130 C.M.R. 450.000.

163. MassHealth did not have actual knowledge of Dr. Rizkallah's noncompliance with material MassHealth regulations until March 2019, at which point it became aware that there was a credible allegation of Dr. Rizkallah's fraud with respect to CDT billing code D9941. MassHealth imposed a payment suspension on all of Dr. Rizkallah's and the Rizkallah Practices' claims for payment for CDT billing code D9941 after learning of the credible allegation of fraud.

164. In his role as owner of the Rizkallah Practice Defendants and through his exercise of control over the operations of the orthodontic offices operated by the Rizkallah Practice Defendants from at least November 2013 to the present, Dr. Rizkallah knowingly and willfully caused false claims for payment to be submitted to the MassHealth program, which constitute false statements or representations in violation of Mass. Gen. Laws c. 118E, § 40(1).

165. These claims were false because they were for services that were not eligible for reimbursement because the Rizkallah Practice Defendants misrepresented compliance with applicable regulations that are conditions of payment. These misrepresentations were material to payment.

166. These claims were false inasmuch as they were for custom-fitted sports mouth guards which were either not provided to the patient or otherwise ineligible for payment by MassHealth; medically unnecessary comprehensive orthodontic treatment services, including medically unnecessary periodic orthodontic treatment visits; and comprehensive orthodontic treatment services, including periodic orthodontic treatment visits, for which MassHealth was misled into granting prior authorization for payment based on material misrepresentations and/or omissions made by Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC.

167. By virtue of the false or fraudulent claims that Dr. Rizkallah submitted or caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus the costs of investigation and litigation, in accordance with Mass. Gen. Laws c. 118E, § 44.

Defendant Mouhab Z. Rizkallah, DDS – Count Thirteen
(Unjust Enrichment)

168. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-167 of this Complaint as if fully alleged herein.

169. If the Rizkallah Practice Defendants had not impliedly misrepresented compliance with applicable state laws and regulations concerning requests for prior authorization for comprehensive orthodontic treatment and/or the submission of claims for payment for comprehensive orthodontic treatment, periodic orthodontic treatment visits, and custom-fitted mouth guards for sports, MassHealth would not have paid these claims. When the Rizkallah Practice Defendants were enriched, in his role as owner of the Rizkallah Practice Defendants, Dr. Rizkallah was enriched.

170. By retaining monies received from the submissions of false claims that were reimbursed by MassHealth, Dr. Rizkallah has retained money that is the property of the Commonwealth of Massachusetts and to which he is not entitled.

171. It is unfair and inequitable for Dr. Rizkallah to retain revenue from payments from MassHealth that Dr. Rizkallah obtained by violating federal and state laws.

172. As a consequence of the acts set forth above, Dr. Rizkallah has been unjustly enriched and is liable to pay such amounts, which are to be determined at trial, to Plaintiff Commonwealth of Massachusetts.

JURY DEMAND

1. The Commonwealth of Massachusetts demands trial by jury on all claims so triable.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth demands and prays that after trial on the merits, judgment be entered in its favor as follows:

Defendant Dr. Mouhab Z. Rizkallah DDS MSD PC

- a. Count One – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by Mass. Gen. Laws c. 12, § 5B, together with such other relief as may be just and proper;
- b. Count Two – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, together with such other relief as may be just and proper;
- c. Count Three – for the amount of the Commonwealth’s damages, as is proved at trial, interest, and costs;
- d. Count Four – for the amount of the Commonwealth’s damages, as is proved at trial, and costs; and
- e. Count Five – for the amount of the Commonwealth’s damages, as is proved at trial, and interest at the statutory rate of 12% pursuant to Mass. Gen. Laws c. 231, § 6C, from the date of each breach of contract, together with such other relief as may be just and proper.

Defendant The Braces Place of Lawrence LLC

- a. Count Six – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by Mass. Gen. Laws c. 12, § 5B, together with such other relief as may be just and proper;
- b. Count Seven – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, together with such other relief as may be just and proper;
- c. Count Eight – for the amount of the Commonwealth’s damages, as is proved at trial, interest, and costs;
- d. Count Nine – for the amount of the Commonwealth’s damages, as is proved at

trial, and costs; and

- e. Count Ten – for the amount of the Commonwealth’s damages, as is proved at trial, and interest at the statutory rate of 12% pursuant to Mass. Gen. Laws c. 231, § 6C, from the date of each breach of contract, together with such other relief as may be just and proper.

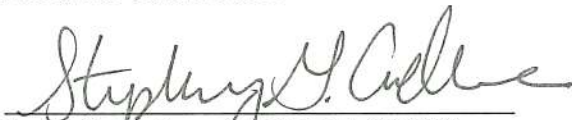
Defendant Dr. Mouhab Z. Rizkallah, DDS

- a. Count Eleven – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by Mass. Gen. Laws c. 12, § 5B, together with such other relief as may be just and proper;
- b. Count Twelve – for the amount of the Commonwealth’s damages, trebled as required by law, plus the costs of investigation and litigation, together with such other relief as may be just and proper; and
- c. Count Thirteen – for the amount of the Commonwealth’s damages, as is proved at trial, interest, and costs.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

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