

CAUSE NO. 12-0096-K
HHSC-OIG CASE NOS.: P200803163 and P200803164

M & M Orthodontics, PA and Diana Malone, DDS, Petitioner	§ § § § § § § § § § §	BEFORE THE HEALTH AND HUMAN SERVICES COMMISSION APPEALS DIVISION
v. TEXAS HEALTH AND HUMAN SERVICES COMMISSION OFFICE OF INSPECTOR GENERAL, Respondent		

**RESPONDENT'S MOTION TO NONSUIT THE DIANA MALONE, DDS,
 CASE, HHSC-OIG CASE NO. P200803164**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Respondent Texas Health and Human Services Commission Office of Inspector General (HHSC-OIG) files this Motion to Nonsuit its claims against Diana Malone, DDS, Case, HHSC-OIG Case No. P200803164.

As a result of the October 5, 2012, Order of Administrative Law Judge Susan Nash Fekety, the claims at issue in the Diana Malone, DDS Case, HHSC-OIG Case No. P200803164 are limited to the dollar for dollar overpayment associated with the 72 clients identified by initials and patient control number (PCN) in Exhibit A.

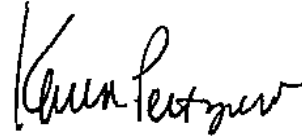
HHSC-OIG wishes to withdraw the allegations of a dollar for dollar overpayment associated with the 72 clients. See 1 TAC § 357,495(c)(4).

Respondent requests that the Diana Malone, DDS, Case, HHSC-OIG Case No. P200803164 be dismissed without prejudice.

Respectfully submitted,

Douglas C. Wilson
 Inspector General

Karen Nelson
 Deputy Inspector General
 Chief Counsel



Karen Pettigrew
Director of Sanctions
State Bar No. 01529500
11101 Metric Blvd.
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Austin, Texas 78758
(512) 491-4076 Phone
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Attorneys for HHSC-OIG

CERTIFICATE OF SERVICE

I certify that on this the 5th day of February, 2013, a true and correct copy of the Respondent's Motion to Nonsuit the Diana Malone, DDS, Case, HHSC-OIG Case No. P200803164, was served on the parties listed below as indicated:

Via Facsimile to (512) 231-5779

HHSC Appeals Division
8407 Wall Street, 3rd Floor
Hearing Room S-329
Austin, TX 78754

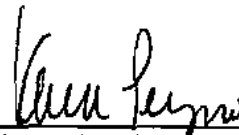
Via Facsimile to (512) 477-1188

M & M Orthodontics, PA
c/o Robert M. Anderton, DDS, JD
Law Offices of Hanna & Anderton
Prosperity Bank Plaza
900 Congress Avenue, Suite 250
Austin, Texas 78701

Respondent's Motion to Nonsuit
M&M Orthodontics, PA
Diana Malone, DDS
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Via Facsimile to (361) 884-7023

Diana Malone, DDS
c/o J.A. Canales, Esq.
Canales & Simonson, P.C.
2601 Morgan Avenue
P.O. Box 5624
Corpus Christi, TX 78465



Karen Pettigrew
HHSC-OIG



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

February 5, 2013

KYLE L. JANEK, MD
EXECUTIVE COMMISSIONER

Via Fax (361)884-7023

J. A. "Tony" Canales, Esq.
Canales & Simonson, P.C.
2601 Morgan Avenue
P. O. Box 5624
Corpus Christi, TX 78465

Re: Cause Number 12-0096-K
Dr. Diana Malone~ HHSC-OIG Case No. P200803164
M & M Orthodontics~ HHSC-OIG Case No. P200803163

Mr. Canales,

Attached, please find Respondent's Motion to Nonsuit the Diana Malone, DDS, case, HHSC-OIG Case Number P200803164. If you have any questions or need anything else, please feel free to call me at 512/491-2077.

Thanks in advance,

A handwritten signature in black ink, appearing to read "Eva Riojas", written over a horizontal dashed line.

Eva Riojas
HHSC~ Sanctions Specialist
Investigator V
P. O. Box 85200
Austin, TX 78708-5200
Work: 512-491-2077
Fax: 512-833-6484



TEXAS HEALTH AND HUMAN SERVICES COMMISSION
P.O. Box 85200
Austin, TX 78708-5200

Kyle L. Janek, M.D.
Executive Commissioner

FACSIMILE COVER SHEET

TO: J. A. "Tony" Canales, Esq.

AGENCY: Law Offices of Canales & Simonson, P. C.

FAX NUMBER: (361) 884-7023

FROM: Eva Riojas, Sanctions Specialist; Chief Couusel Division

PHONE: (512) 491-2077

DATE: February 5, 2013

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