

Cause No. D-1-GN-14-000320

ANTOINE DENTAL CENTER § IN THE DISTRICT COURT
Plaintiff, §
v. § OF TRAVIS COUNTY, TEXAS
ACS STATE HEALTHCARE, LLC. §
Defendant. §
§ 98TH JUDICIAL DISTRICT

ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Plaintiff Antoine Dental Center complaining of the defendant ACS State Healthcare, LLC, and allege the following:

I. Nature of Case and Discovery

- 1. Plaintiff intends to conduct discovery under Level 2 of TEXAS RULE OF CIVIL PROCEDURE 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in TEXAS RULE OF CIVIL PROCEDURE 169 because plaintiff seeks monetary relief over \$100,000.
- 2. Plaintiff seeks monetary relief over \$1,000,000. TEX. R. CIV. P. 47(C)(5).

II. The Parties

- 3. Antoine Dental Center (hereinafter Antoine) is a d/b/a for Dr. Behzad Nazari, DDS. Dr. Nazari is a licensed Texas dentist, approved Medicaid provider, and the owner of Antoine. Antoine’s principal place of business is 6906 Airline Dr. #106, Houston, Texas 77076. Antoine can be served through the undersigned counsel.
- 4. ACS State Healthcare, LLC (hereinafter ACS) and the Texas Medicaid Healthcare Partnership (hereinafter TMHP) are d/b/as for Xerox State Healthcare, LLC, a Delaware corporation. ACS is authorized to do business in Texas and may be served with process by

serving its registered agent for service of process: CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

5. In the event any parties are misnamed or not included herein, such was a "misnomer" and such parties are "alter egos" of parties named herein. In the event that the true parties are misidentified, plaintiff hereby asserts reliance upon the doctrine of misidentification.

6. Pursuant to Rule 28 of the TEXAS RULES OF CIVIL PROCEDURE, plaintiff hereby brings suit against all partnerships, unincorporated associations, individuals, entities, and private corporations doing business under the assumed names that the particular defendant may have used or are using.

III. Venue and Jurisdiction

7. This court has jurisdiction over defendant ACS because ACS engaged in business by contracting with the plaintiff. The contract was to be performed in whole or in part in Texas by all parties. From 2004 through the present, ACS contracted with plaintiff to be Medicaid providers, and ACS operated under that contract.

8. This court has jurisdiction over defendant ACS because ACS engaged in business by contracting with the State of Texas, and that contract was for the benefit of the plaintiff as well as Texas Medicaid recipients. The contract was performed in whole or in part in Texas by both parties. *Inter alia*, ACS contracted with the State of Texas to perform prior authorization reviews of requested orthodontic services submitted by Antoine.

9. This court has jurisdiction over defendant ACS because ACS committed a tort and breached a contract, which is the subject of this lawsuit, in whole or in part in Texas. ACS broke Texas law by employing unlicensed, unqualified, and inexperienced personnel to render diagnoses regarding the medical necessity of orthodontic services.

10. Venue is proper under TEXAS CIVIL PRACTICE AND REMEDIES CODE section 15.020 because this lawsuit involves a “major transaction” as defined by that section, and this is the county designated in writing as the county for suit. Venue is permissive in Travis County under TEXAS CIVIL PRACTICE AND REMEDIES CODE section 15.035(a) because plaintiff asserts claims for breach of a written contract, and ACS submitted to jurisdiction in Travis County for any action brought under the contract. Venue is proper in Travis County under TEXAS CIVIL PRACTICE AND REMEDIES CODE section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in Travis County.

11. All conditions precedent have occurred.

IV. Facts

What is Prior Authorization?

12. Texas Medicaid requires that orthodontic services be independently and objectively scrutinized before the State consents to treatment and payment. Prior authorization is the mechanism the State uses to determine the medical necessity of non-emergency orthodontic items/services prior to delivery of those items/services. Pursuant to Texas Health and Human Services Commission (hereinafter “HHSC”) rules, Texas Medicaid greatly restricts when it will pay for orthodontic services:

Orthodontic services for cosmetic reasons only are not a covered Medicaid service. **Orthodontic services must be prior authorized** and are limited to treatment of severe handicapping malocclusion and other related conditions as described and measured by the procedures and standards published in the [TMPPM¹].

25 TEX. ADMIN. CODE §33.71 (emphasis added). Prior authorization is a statement of assurance to the orthodontic provider that, absent an intervening disqualifying factor, the delivery of the

¹ “TMPPM” is the Texas Medicaid Provider Procedures Manual, which is issued yearly by the HHSC and provides valuable guidance to Medicaid providers.

requested orthodontic service has been deemed by ACS to be medically necessary, and therefore approved by the State.

13. The prior authorization process is straightforward. Texas Medicaid requires that a dental provider send documentation (x-rays, cephalographs, photos, etc.) regarding the patient's orthodontic condition to ACS for review. In addition, the orthodontic provider submits his professional opinion of the patient on a Handicapping Labio-lingual Deviation index (HLD) score sheet. ACS knew providers relied entirely on the prior authorization process because approval was a mandatory prerequisite to providing orthodontic services and being paid. Once ACS issued its prior authorization decision, the decision was not appealable by the provider.

14. The HLD scoring system combines a number of treatable orthodontic conditions into an index. HLD score sheets use a mix of objective and subjective conditions to determine whether a Medicaid patient qualifies for orthodontic services. The fact that the HLD score sheet requires both objective and subjective findings highlights the importance of ACS performing a thorough prior authorization review.

The History of Orthodontic Prior Authorization.

15. The process for reviewing and approving orthodontic prior authorization requests pre-dates the defendant ACS. The National Heritage Insurance Corporation (NHIC) was responsible for reviewing prior authorization requests before ACS assumed the contract in January 2004. Since January 1, 2004, ACS acted as an independent contractor, and was a contracted agent of the State, under the contract with HHSC. ACS was responsible for reviewing each orthodontic service request, and ACS was further charged with the responsibility to grant or deny each prior authorization request as provided by the program requirements. The result was that ACS had the final say in determining the medical necessity of each request for orthodontic services.

16. Prior to assuming the NHIC contract, and for a period of time after assuming the contract from NHIC, ACS received training from NHIC personnel regarding the proper method for receiving and processing orthodontic prior authorization requests. NHIC personnel explained how and why the review of each prior authorization submission was important, and walked ACS through the process. Despite its training from NHIC, ACS had no intention of following the prior authorization system that had been in place for years, nor did ACS intend to otherwise meet the prior authorization requirements set out in its contract, the TMPPM and required by state law.

ACS rejects its contractual responsibilities.

17. When ACS took over the contract in 2004, it immediately abandoned the prior authorization review process that had been setup by NHIC. ACS never intended to fulfill its orthodontic prior authorization responsibilities to HHSC. From 2004 to 2011, ACS continually misrepresented that it was acting in compliance with its contractual duties.

18. It is now known that ACS failed to employ adequate medical professionals for staffing and managing the orthodontic prior authorization responsibilities. ACS employed only one licensed dentist from 2004 through 2011, which was far short of the manpower necessary to handle the review of tens of thousands of orthodontic prior authorization requests every year. ACS could not reasonably have expected to handle such a workload by employing only one dentist.

ACS potentially commits thousands of violations.

19. It is believed ACS allowed “dental specialists”—unlicensed, unqualified individuals—to render prior authorization opinions regarding the medical necessity of requested orthodontic services. The “dental specialist” approvals were not reviewed or ratified by ACS’ licensed dental director or another qualified dental professional. These actions not only violated ACS’

contractual obligations, they may have also violated other Texas law such as the Dental Practice Act.² It is believed these unlicensed ACS “specialists” rendered tens of thousands of prior authorization approvals/medical opinions in violation of Texas law.

20. ACS was paid by the state for each prior authorization decision that was made. It is believed that ACS employed unlicensed “specialists,” rather than licensed Texas dentists, as a profit generating measure.

21. From November 1, 2008 through August 31, 2011, Antoine submitted prior authorization requests to ACS for a determination of medical necessity. Unbeknownst to Antoine, ACS’ dental specialists—not the dental director—approved almost all of Antoine’s requests. ACS’ prior authorization approvals were promises that:

- a) the requested orthodontic services were medically necessary, and/or
- b) the approval had been issued by a licensed dentist, and/or
- c) the approval was an actual and legitimate dental diagnosis, and/or
- d) the requested orthodontic services were allowable under Texas law and as permitted by Medicaid policy, the TMPPM, and HHSC rules, and/or
- e) a proper, thorough and legal review had been made, and/or
- f) future orthodontic services would be properly reimburseable to Antoine, absent some intervening disqualification such as the patient’s ineligibility.

22. Because ACS was charged with determining medical necessity, and because prior authorization approval was a mandatory prerequisite to furnishing services, the promises were material. Antoine expected performance of these promises. Antoine relied on ACS. Antoine

² Texas Occupations Code §251.003 prevents unlicensed individuals from diagnosing conditions of the human teeth and mouth. Section 256.001 states that a person may not practice dentistry without a license. Thus, state law requires that opinions regarding medical necessity of orthodontic treatment must be made by licensed dentists. Section 264.151 prescribes criminal penalties for certain violations of the Dental Practice Act.

expected that, once approved, no further inquiry into the medical necessity of the services would be required. Further, ACS promised that its subsequent payments to Antoine (after the services had actually been delivered) were made because the services had been, in fact, properly approved as medically necessary. Even though Antoine believes that all of its requests reflected medically necessary services, and therefore should have been approved by ACS, each prior authorization approval represents a separate violation of the law **if** ACS' approval was issued illegally and/or in violation of its contractual obligations.

ACS actively concealed its potentially illegal activity.

23. ACS withheld the truth regarding its prior authorization program. In an attempt to publicly appear consistent with NHIC's prior authorization process, ACS continued to require that dental providers (such as Antoine) submit all supporting documentation for each HLD score sheet. Incredibly, now it is believed that ACS did nothing with that documentation, other than assure that it had been submitted by the provider. It is believed that, privately, ACS' specialists were instructed to forward to its dental director only those requests that had scored below the threshold for orthodontic services (i.e. below 26 points), or had some provider justification attached. As a result, only 10%-20% of the orthodontic prior authorization requests were actually forwarded to ACS' one licensed dentist. ACS' actions were calculated to make ACS appear compliant with its contract and HHSC policies, while ACS knew that its actions were entirely inconsistent with the letter and spirit of its obligations. Effectively, then, ACS' actions not only damaged the Medicaid program directly by approving services without determining their medical necessity, but ACS' deception also exacerbated the problem by failing to give providers notice regarding the proper standard for medical necessity and caused these providers substantial damages.

24. For the past ten years, ACS has continued to publicly represent to the world that it was fulfilling its contractual and legal responsibilities. Based on ACS' representations that it was fulfilling its duties to the State, ACS repeatedly renewed its contract with HHSC from 2004 through the present. Each year that ACS renewed its contract, it represented that it would fulfill its contractual obligations and abide by Texas law requiring that decisions about medical necessity be rendered only by licensed dentists. ACS made those representations knowing that it had not done so in the past, and had no intention of changing its procedures to do so in the future.

The *Frew* decision magnifies ACS' acts.

25. In September 2007, after fifteen years of litigation on the subject, Texas was ordered to implement a corrective action plan that increased the Medicaid reimbursement rates to all dental providers. That plan was required pursuant to the *Frew* case³, which was a 1993 class-action lawsuit against the HHSC alleging that Texas' Medicaid reimbursement rates were so low that they prevented indigent children from receiving timely, comprehensive health care.

26. The increase in reimbursement rates was intended to entice dental providers to become Medicaid providers. It worked. The state raised payment rates for dental services, and, as a result, the number of dentists participating in Medicaid increased from 45.4% in 2007 to 63.4% in 2010. As expected, spending on Texas's dental services increased dramatically.

27. Although the number of prior authorization requests increased by 240% between 2007 and 2010, ACS continued to employ only one dentist. That dentist was neither tasked with nor responsible for supervising the clerical specialists that were issuing the approvals.

³ *Frew v. Gilbert*, 109 F. Supp. 2d 579 (E.D. Tex. 2000) *vacated sub nom. Frazar v. Gilbert*, 300 F.3d 530 (5th Cir. 2002) *rev'd sub nom. Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 124 S. Ct. 899, 157 L. Ed. 2d 855 (2004) and *aff'd in part, appeal dismissed in part sub nom. Frazar v. Hawkins*, 376 F.3d 444 (5th Cir. 2004); *Frew v. Hawkins*, 401 F. Supp. 2d 619 (E.D. Tex. 2005) *aff'd sub nom. Frazar v. Ladd*, 457 F.3d 432 (5th Cir. 2006); *Hawkins v. Frew*, 549 U.S. 1118, 127 S. Ct. 1039, 166 L. Ed. 2d 714 (2007).

28. By 2010, Texas's Medicaid program orthodontic spending had skyrocketed. ACS was the sole entity responsible for this increase, because it was the sole gatekeeper for the approval and payment of orthodontic services.

The Office of Inspector General seeks recovery from Medicaid providers.

29. In an attempt to limit the high cost of Medicaid orthodontia, the Texas Office of Inspector General (hereinafter "OIG") took a drastic step. In 2011, the OIG generated a list of the top Medicaid orthodontic billers and placed them on "payment hold." Antoine was one of those providers. To date, the OIG has not taken action against ACS, the real responsible party.

30. In 2011, Antoine Dental Center had multiple offices in the Houston area. Given its offices' proximity to some of the state's poorest children, it served a large Medicaid patient population. Because it served a large Medicaid population, it submitted numerous prior authorization requests to ACS from 2008 through 2011.

31. Antoine did not know that ACS was failing to perform a true and accurate review for medical necessity. Antoine relied on ACS' prior authorization approvals to confirm that its dentists' analysis was proper and consistent with Medicaid standards and requirements.

32. Unbeknownst to Antoine, OIG audits in 2008 and 2012 concluded that most, if not almost all, of the prior authorization requests for patients with HLD scores of 26 or greater (indicating medical necessity) had not been actually "evaluated" at all by ACS. Thus, the OIG concluded that a true finding of medical necessity had in reality not occurred. Billing for services that are not necessary is fraud. Therefore, the OIG opened fraud investigations against each of the top 25 providers, including Antoine, which has caused more injury and damages to Plaintiff. Stated differently, ACS issued its approvals through a process that gutted the State's belief in the accuracy of ACS' decision, and the OIG punished the providers instead of ACS.

33. On or about April 4, 2012, the OIG instituted a “payment hold” against Antoine. A payment hold temporarily freezes future Medicaid payments to a provider, despite the provider’s ongoing participation in the Medicaid program. The payment hold against Antoine was issued pursuant to what the OIG called a “credible allegation of fraud” regarding Antoine’s past Medicaid billings. The OIG placed a 100% payment hold against Antoine’s orthodontic billings.

34. As a result of the payment hold, Antoine was required to make significant financial concessions and changes to its business. Antoine also engaged legal counsel to defend itself from the OIG’s claims, at a significant expense that continues today.

35. Antoine requested an expedited hearing concerning the propriety of the payment hold as well as a separate hearing on the merits regarding whether any of Antoine’s submitted charges were erroneous. The payment hold hearing was limited to determining whether there was a credible allegation of fraud, and if so, what level of payment hold, if any, was justified on the facts. The payment hold hearing was held at the State Office of Administrative Hearings on May 28 – May 31, 2012.

36. In Antoine’s payment hold hearing, the OIG’s allegations against Antoine were rooted in two assumptions. First, the OIG assumed that Antoine’s prior authorization requests had not been properly vetted by ACS; that is, ACS had approved Antoine’s requests without knowing whether approval was actually proper. Because ACS was not a party to that administrative action, Antoine was prevented from determining whether ACS had, in fact, performed a proper review of Antoine’s prior authorization requests. This lawsuit seeks to address that question, and finally determine whether ACS reviewed Antoine’s requests as required by its contract and the law.

37. Regarding the OIG's second assumption, the OIG alleged Antoine's requests were approved when, in fact, they should have been denied. Antoine denied that assertion in the administrative case, and Antoine continues to deny that claim here. All services provided to Antoine's patients were actually medically necessary, regardless of what ACS decided.

38. In the hearing, Antoine was required to prove that its HLD score sheets had reached the correct conclusion regarding medical necessity. The State chose 63 patients that Antoine dentists had scored at or above 26 on the HLD index (which would indicate medical necessity). As required by law, Antoine had submitted the HLD score sheets, x-rays, photos, models, etc. to ACS for each patient. Each patient received prior authorization approval from ACS. Nevertheless, the OIG alleged that 61 of the 63 patients— 97% —did not meet the 26-point standard for approval. The OIG did not give any weight to ACS' prior authorization decisions, and aggressively prevented Antoine from allowing ACS' decision to be considered by the administrative law judge.⁴

39. At the hearing, Antoine proved that all 63 patients had actual medical need for the services rendered and that, as a result, Antoine did not engage in fraud. Antoine continues to assert that even though ACS' approval was carelessly or fraudulently given, that "approved" is still the correct conclusion for all of Antoine's requests that are the subject of the OIG's administrative actions. But because ACS' decision was done so poorly, the State placed a payment hold against Antoine and forced it to prove medical necessity.

⁴ The OIG continues to aggressively fight any allegation or affirmative defense that could result in ACS being held accountable for its part in these HLD scoring cases. *See generally* Inspector General's Motion for Summary Disposition on Affirmative Defenses in *Harlingen Family Dentistry v. OIG*, HHSC docket number 13-0642-K, currently pending before the agency. The OIG is currently seeking almost \$8 million dollars from Antoine in a similar case based on the same HLD scoring allegations.

40. On November 4, 2013, Administrative Law Judges Seitzman and Egan issued their ruling, which included these Findings of Fact regarding TMHP:

7. During the times in question in this case, Texas Medicaid Health Partnership (TMHP) was the contracted Texas Medicaid claims administrator.
12. To be reimbursed for orthodontic services, the Manual required dental providers to first obtain prior authorization from TMHP.
21. TMHP was responsible for reviewing the filed material to evaluate whether the orthodontic services were medically necessary before granting prior authorization.
23. After ADC provided the orthodontic treatment to the patients in this case, TMHP approved payment.

2008 HHSC-OIG Audit of TMHP

24. On August 29, 2008, HHSC-OIG issued a performance audit report regarding TMHP's prior authorization process for the period between September 1, 2006, and March 31, 2008, finding that TMHP's prior authorization process did not comply with the Manual (the 2008 audit report).
 25. In the 2008 audit report, HHSC-OIG found that TMHP's prior authorization staff failed to review the supporting material submitted by providers with their prior authorization requests, as required, and that TMHP's staff did not have the dental credentials necessary to evaluate whether the supporting documentation submitted by providers supported the HLD score.
 26. ADC was unaware of the 2008 audit report and HHSC-OIG's assertion that TMHP was not properly performing prior authorization evaluations.
41. Administrative Law Judges Seitzman and Egan made the following Findings of Fact in their proposal for decision:

VIII. FINDINGS OF FACT

Background

1. Behzad Nazari, D.D.S., has owned Antoine Dental Center (ADC) since 1998. ADC has two dental clinics in Houston, Texas, that treat Medicaid and private pay clients.
2. Between November 1, 2008, and August 31, 2011, ADC provided dental and orthodontic services to Medicaid patients as a Texas Medicaid Provider holding Provider Identification Nos. 1905432, 2187031, 1952657, and 0908162.DC.
48. There is no evidence that is credible, reliable, or verifiable, or that has indicia of reliability, that ADC incorrectly scored the HLD Index to obtain Texas Medicaid benefits for patients or to obtain Texas Medicaid payments.
49. There is no evidence that is credible, reliable, or verifiable, or that has indicia of reliability, that ADC committed fraud or engaged in willful misrepresentation with respect to the 63 ADC patients in this case.
50. There is no evidence that is credible, reliable, or verifying, or that has indicia of reliability, that ADC committed fraud or misrepresentation in filing requests for prior authorization with TMHP for the 63 patients at issue in this case.
42. HHSC is currently considering the Proposal for Decision, and is expected to issue a final order in the matter in 60 days.
43. From the payment hold on April 4, 2012 through the effective date of the proposal for decision, the OIG withheld over \$1.1 million from Antoine. The money wrongfully remains in the hands of the OIG today, held as an “offset” against any final determination that Antoine may have been paid for orthodontic services that were not medically necessary. Damages continue to accrue.

V. Causes of Action

Common Law Fraud (Fraudulent Misrepresentation and Fraudulent Inducement)

44. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. ACS’ prior authorization approvals were false representations made to Antoine. It is believed ACS knowingly issued these prior authorizations to Antoine because ACS knew that it

was approving requests without a proper medical review, and/or because it approved the prior authorization requests without any knowledge of their truth. It is believed ACS intended for Antoine to rely on the approvals as a prerequisite for providing the requested services. Approval was material because it was a prerequisite for payment. Antoine actually and justifiably relied on ACS' fraudulent approvals.

45. ACS' approvals induced Antoine to continue to grade subsequent HLD requests in the same or similar manner, and led Antoine to believe that their requests were consistent with Medicaid standards and requirements.

46. ACS's fraudulent approvals caused injury to Antoine. As a result of ACS' actions, Antoine submitted requests for payment and ACS actually paid for those services, Antoine was placed on payment hold, Antoine was forced to defend itself in an administrative payment hold hearing, and Antoine is facing administrative claims by HHSC for repayment (including claims for damages and attorney fees). Antoine's reputation and business have suffered severe injury. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Breach of the ACS-State of Texas Contract

47. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. In the alternative, ACS' actions constitute a breach of ACS' contract with the State for the benefit of Antoine. ACS' contract with the state required that it conduct a proper, thorough and legal review of prior authorization requests for the purpose of determining medical necessity. To that end, ACS should have employed a licensed dentist.

48. ACS was an agent of the State of Texas engaged specifically for the purpose of determining medical necessity. The third party beneficiaries of that ACS-State of Texas contract were Medicaid patients and Antoine. The patients were entitled to receive orthodontic services

that were medically necessary. Antoine was responsible for actually delivering the orthodontic services that ACS had deemed medically necessary. Thus, Antoine was a third party beneficiary that relied on ACS' approvals.

49. ACS breached its contract by, *inter alia*, failing to provide qualified staff; possibly violating Texas law; permitting non-dentists to make determinations of medical necessity; and issuing medical opinions without conducting a reasonable and prudent examination of evidence. The breaches were material, and recurred across many different Medicaid patients and for many years.

50. ACS' actions proximately caused Antoine's injury. Antoine's injuries were caused-in-fact by ACS' actions, and they were foreseeable. Because ACS' prior authorization was a necessary prerequisite to providing services, Antoine relied entirely on ACS' determinations regarding medical necessity; thus, ACS' actions were the direct factual cause of Antoine's injuries. ACS' actions were foreseeable in that a person of ordinary intelligence should have anticipated that issuing a decision without actually reviewing or considering the evidence (x-rays, photos, models, etc.) would eviscerate the credibility and reliability of the decision. Once the State assumed that ACS' approvals were not trustworthy, it was foreseeable that the State would demand repayment, and/or would require Antoine to independently do ACS' job after the fact by proving that payment was proper because the services were medically necessary and reimbursable under Texas Medicaid law.

51. Antoine suffered and continues to suffer significant damage. Antoine seeks damages that would have given the plaintiff the benefit of the bargain by putting them in as good a position as they would have been in if the contract had been performed. Antoine seeks reliance interest damages to restore the expenditures Antoine made in reliance on ACS' contract with the state

and the approvals that ACS made under that contract. Antoine also seeks damages for its restitution interest to restore money sought by the Office of the Inspector General from Antoine. Such damages would put the plaintiff in as good a position as it would have been in if the contract had been properly fulfilled. In addition, Antoine seeks liquidated damages as set out in the ACS-State of Texas contract. Antoine has engaged legal counsel to defend itself from the OIG's charges, and those legal expenses continue today. Antoine has incurred benefit of the bargain damages, out-of-pocket damages, lost profits, lost future profits, loss of credit, and loss of goodwill. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Breach of Contract (Promissory Estoppel)

52. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. In the alternative, ACS' actions constitute promissory estoppel.

53. ACS' prior authorizations constitute promises to Antoine in numerous ways. Because prior authorization was a prerequisite to furnishing services, and because ACS was the entity charged with discharging prior authorization duties, Antoine reasonably, substantially, and foreseeably relied on ACS' promises.

54. Antoine suffered and continues to suffer significant damage. Antoine suffered reliance damages by investing time, labor, equipment, and orthodontic appliances in each Medicaid patient that ACS approved. Antoine has engaged legal counsel to defend itself from the OIG's charges, and those legal expenses continue today. Antoine has been required to do ACS' job after the fact—namely, demonstrate that the services were medically necessary and properly reimbursable under Texas Medicaid law. Antoine has incurred benefit of the bargain damages, out-of-pocket damages, lost profits, lost future profits, loss of credit, and loss of goodwill. All of

these damages were directly and/or proximately caused by ACS' promises. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Negligent Hiring/Negligent Supervision

55. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. ACS' actions constitute negligent hiring and/or negligent supervision. ACS was required to render medical diagnoses. To that end, ACS was required by law to employ a licensed dentist to render a diagnosis regarding medical necessity. ACS was also required by law to properly supervise its employees to make sure diagnoses were made only by licensed dentists.

56. ACS knew or should have known that decisions regarding medical necessity can only be rendered by licensed personnel. Texas Occupations Code section 251.003 defines the practice of dentistry to include a diagnosis of the human mouth and/or teeth; section 256.001 states that a person may not practice dentistry without a license; section 264.151 makes it a third-degree felony to practice dentistry without a license.

57. ACS' actions proximately caused Antoine's injury. Antoine's injuries were caused-in-fact by ACS' actions, and they were foreseeable. Because ACS' prior authorization was a necessary prerequisite to providing services, Antoine relied entirely on ACS' determinations regarding medical necessity; thus, ACS' actions were the direct factual cause of Antoine's injuries. ACS' actions were foreseeable in that any person of ordinary intelligence should have anticipated that paying Antoine for services that have not properly been determined to be medically necessary would precipitate a demand for repayment, and/or would require Antoine to independently do ACS' job after the fact by proving that payment was proper because those services were medically necessary and were reimbursable under Texas Medicaid law.

58. Antoine suffered and continues to suffer significant damage. Antoine suffered reliance damages by investing the cost of services for each Medicaid patient that ACS approved. Antoine has engaged legal counsel to defend itself from the OIG's charges, and those legal expenses continue today. Antoine suffered and continues to suffer significant damage to its reputation, business, referral base, earnings and earning power. Dr. Nazari has suffered inconvenience and loss of enjoyment of life in that he has had to dedicate significant mental and personal capital to doing ACS' job. Antoine has suffered exemplary damages because ACS' conduct was grossly negligent, outrageous and malicious and such conduct should be penalized so that it is deterred in the future. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Negligence

59. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. ACS' actions constitute negligence and gross negligence. ACS was required to render medical diagnoses. To that end, ACS had a duty to employ a licensed dentist to render a diagnosis regarding medical necessity. ACS had a duty to assure that the personnel had appropriate education, training and experience to render such a diagnosis. ACS had a duty to review the supporting prior authorization documentation (such as x-rays and photos) to determine whether the requested services were medically necessary.

60. ACS' actions breached the standard of care because ACS: failed to provide prior authorization staff that were properly licensed, qualified and experienced dental professionals; violated the law, specifically the Dental Practice Act, by permitting non-dentists to make determinations of medical necessity, and; issued medical opinions (prior authorizations) without conducting a reasonable and prudent examination of evidence.

61. ACS' actions proximately caused Antoine's injury. Antoine's injuries were caused-in-fact by ACS' actions, and they were foreseeable. Because ACS' prior authorization was a necessary prerequisite to providing services, Antoine relied entirely on ACS' determinations regarding medical necessity; thus, ACS' actions were the direct factual cause of Antoine's injuries. ACS' actions were foreseeable in that any person of ordinary intelligence should have anticipated that paying Antoine for services that have not properly been determined to be medically necessary would precipitate a demand for repayment, and/or would require Antoine to independently do ACS' job after the fact.

62. Antoine suffered and continues to suffer significant damage to its reputation, business, referral base, earnings and earning power. Antoine has engaged legal counsel to defend itself from the OIG's charges, and those legal expenses continue today. Dr. Nazari has suffered inconvenience and loss of enjoyment of life in that he has had to dedicate significant mental and personal capital to doing ACS' job. Antoine has suffered exemplary damages because ACS' conduct is grossly negligent, outrageous and malicious, and such conduct should be penalized so that it is deterred in the future. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Negligent Misrepresentation

63. Antoine re-alleges and incorporates the above facts and allegations as if fully set out herein. ACS' actions constitute negligent misrepresentation. ACS' actions constitute misrepresentations to Antoine in numerous ways. Because, *inter alia*, prior authorization approval was a prerequisite to furnishing services, these representations guided and controlled Antoine's responses. Antoine justifiably relied on these representations. Further, ACS represented that its prior authorization approvals were dispositive of medical necessity; Antoine

expected that, once approved, no further inquiry into the medical necessity of the services would be required. Further, ACS represented that its subsequent payments to Antoine (after the services had actually been delivered) were made because services had been, in fact, properly approved as medically necessary.

64. ACS did not exercise reasonable care or competence in making its determinations and representations. ACS knew or should have known that its representation were false.

65. Because prior authorization was a prerequisite to furnishing services, and because ACS was the entity charged with discharging prior authorization duties, Antoine reasonably, substantially, foreseeably, and justifiably relied on ACS' representations.

66. Antoine suffered and continues to suffer significant damage. Antoine suffered reliance damages by investing time, labor, equipment, and orthodontic appliances in each Medicaid patient that ACS approved. Antoine has engaged legal counsel to defend itself from the OIG's charges, and those legal expenses continue today. Antoine has been required to do ACS' job after the fact. Antoine has incurred benefit of the bargain damages, out-of-pocket damages, lost profits, loss of credit, and loss of goodwill. All of these damages were directly and/or proximately cause by ACS' negligent misrepresentations. Antoine seeks recovery of actual and exemplary damages, interest, court costs, and attorney fees.

Gross Negligence / Misapplication of Fiduciary Property

67. Plaintiff pleads ACS committed gross negligence and/or the misapplication of fiduciary property which would entitle Plaintiff to unlimited punitive damages.

VI. Damages

68. Plaintiff has suffered and is entitled to recover damages including, but not limited to loss of use of funds sequestered by the State, actual damages, damage to reputation, damage to

business, damage to earnings and earning power, inconvenience, loss of enjoyment of life, fees and expenses, interest, punitive/exemplary damages, and attorney fees.

VII. Conclusion

69. ACS' actions have harmed Antoine Dental Center because ACS committed fraud, negligent hiring, negligence, and gross negligence. ACS's actions have subjected Antoine Dental Center to unnecessary civil and administrative legal action, and that, in turn has caused additional injury. ACS' actions have required Antoine Dental Center to perform ACS' job after-the-fact, by proving to the OIG that the orthodontic services rendered were medically necessary and appropriate for reimbursement.

VIII. Jury Demand

70. Plaintiff respectfully requests a trial by jury.

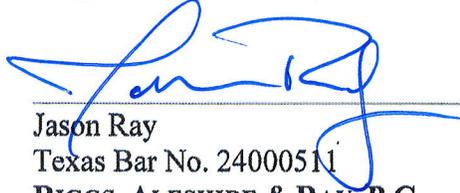
IX. Request for Disclosure

71. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

X. Prayer

72. Wherefore, premises considered, Plaintiff Antoine Dental Center prays that upon final hearing of the cause, judgment be entered against the Defendant ACS State Healthcare, LLC for damages, together with pre-judgment and post judgment interest at the legal rate, costs of court, and other such relief to which the Plaintiff may be entitled.

Respectfully submitted,



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