

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

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

**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.

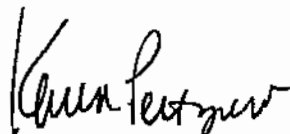
HHSC-OIG wishes to withdraw the allegations of a dollar for dollar overpayment associated with the 72 clients. See 1 TAC § 357,495(c)(4).

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



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Karen Pettigrew  
Director of Sanctions  
State Bar No. 01529500  
11101 Metric Blvd.  
Building I  
Austin, Texas 78758  
(512) 491-4076 Phone  
(512) 833-6484 Fax

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, 3<sup>rd</sup> Floor  
Hearing Room S-329  
Austin, TX 78754

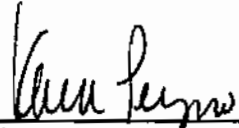
**Via Facsimile to (512) 477-1188**

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  
HHSC Causa No. 12-0096-K  
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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



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Karen Pettigrew  
HHSC-OIG

	Client Name	PCN
1	C, D	505640099
2	S, M	506428713
3	N, J	506519926
4	F, N	507431241
5	M, B	507664812
6	S, C	507987401
7	M, C	508200251
8	V, V	508237657
9	V, B	508396160
10	G, R	508498995
11	A, N	508507543
12	M, T	508897436
13	G, M	509037970
14	C, H	509146797
15	M, N	509386792
16	M, M	509441819
17	L, R	509558678
18	V, R	509563182
19	S, V	509688755
20	G, C	509721814
21	G, L	509731307
22	C, J	509738169
23	F, D	509896993
24	R, A	509921737
25	FI, R	510003459
26	Z, V	510114644
27	M, G	510120612
28	Y, G	510332963
29	P, H, T	510662457
30	L, M	510745097
31	O, A	510961938
32	R, C	511029434
33	G, M	511057693
34	Z, D	511148850
35	G, A	511288404
36	A, D	511467117
37	J, J	511489722
38	M, F	511505425
39	M, F	511536515
40	B, R	511709189
41	W, K	511767158
42	S, J	511893614
43	M, F	511989439
44	C, C	512005816
45	J, R	512045305

Exhibit A

46	P	J	512069949
47	P	A	512216041
48	R	E	512276280
49	M	A	512358120
50	G	H	512475209
51	H	E	512552286
52	C	L	512556904
53	A	A	512615491
54	G	M	512750097
55	M	E	512770315
56	A	J	512823550
57	C	S	512872850
58	C	KI	512949826
59	M	A	512979507
60	J	M	513003143
61	R	A	513019124
62	F	C	513041415
63	F	C	513148388
64	H	V	513155678
65	C	K	513158300
66	R	C	513268770
67	E	S	513297586
68	L	Y	513369262
69	O	T	513379356
70	H	T	513532442
71	S	A	513668014



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 cursive script that reads "Eva Riojas".

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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