

**ATTORNEY GENERAL OF THE STATE OF NEW YORK**

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In the Matter of  
Aspen Dental Management, Inc.

Assurance No.: 15-103

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**ASSURANCE OF DISCONTINUANCE  
UNDER EXECUTIVE LAW  
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Section 63(12) of the Executive Law and Article 22-A of the General Business Law, Eric T. Schneiderman, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Aspen Dental Management, Inc. (“ADMI”). Based upon that inquiry, the Office of the Attorney General (“the OAG”) has made the following findings, and ADMI has agreed to modify its business practices and comply with the following provisions of this Assurance of Discontinuance (“Assurance”).

**I. BACKGROUND**

1. ADMI is a general business corporation incorporated in Delaware and with its principal place of business at 281 Sanders Creek Parkway, East Syracuse, New York, 13057. ADMI is engaged in the business of providing “business support services” to independently owned dental practices located in New York State. It also has a “practice support center” located in East Syracuse, New York. The support center contains, among other things, a centralized patient scheduling call center, a training facility for dentists, hygienists, and office managers, and departments providing human resources, accounting, finance, marketing and other business support services to

independently owned dental practices located in New York State that use the Aspen Dental trademark.

2. In New York, seven dental practices, operating a total of 40 “Aspen Dental” offices, have entered into contractual agreements with ADMI for it to provide them with business support services and rights to use the “Aspen Dental” trade name:

- Aspen Dental Associates of Central New York, PLLC, which currently operates nine offices within New York.
- Aspen Dental of Rochester, PLLC, which currently operates seven offices within New York.
- Dental Services of Western New York, PLLC, which currently operates four offices within New York.
- Dental Services of Dunkirk, PLLC, which currently operates one office in New York.
- Aspen Dental Associates of Hudson Valley, PLLC, which currently operates fourteen offices within New York.
- Anand Dental Health Services, PC, which currently operates two offices in New York.
- Judge Dental, PLLC, which currently operates three offices in New York.

## **II. THE OAG’S INVESTIGATIONS AND FINDINGS**

3. After receiving over 300 consumer complaints since 2005 concerning consumers’ experiences at “Aspen Dental” dental offices, the OAG commenced an investigation into ADMI, and has concluded that ADMI is not merely acting as a dental support organization (“DSO”) providing back-end business and administrative support to independent dental practices that choose to retain it for such assistance. Rather, ADMI has facilitated the development of dental practices owned by individual dentists, but

which, in violation of New York law: (a) are subject to extensive involvement of ADMI, (b) share profits with ADMI, and which (c) are marketed under the “Aspen Dental” trade name creating an impression of common ownership, treatment goals and philosophies, policies and procedures, and standards of care.

4. With the knowledge of the Dental Practices, through an array of business activities, including incentivizing and otherwise working with staff to increase sales of dental services and products, implementing revenue-oriented patient scheduling systems, and hiring and oversight of clinical staff, including associate dentists and dental hygienists, ADMI is making many “business” decisions for the Dental Practices that are the responsibility of the Dental Practices and the dentists who own them.

5. ADMI has exercised significant control over the Dental Practices’ finances, and the finances between these entities are not sufficiently independent.

6. For example, until recently, pursuant to agreements with each practice owner (“Practice Owner”), ADMI accepted patient payments and insurance payments in a single consolidated account to which the Practice Owners themselves did not have access. During the pendency of the OAG investigation, each of the Dental Practices began maintaining its own bank account, to which ADMI has access for the purpose of paying the Dental Practices’ employees and other business expenses including fees owed by the Dental Practices to ADMI. Further, ADMI has shared with the Dental Practices the costs associated with employing dentists, including salaries and bonuses, and has advanced funds on a routine basis to the Dental Practices.

#### **A. Complaints Against “Aspen Dental”**

7. Since 2005, the OAG has received over 300 complaints concerning consumers’ experiences at “Aspen Dental” dental offices. The complaints, which often indicate that consumers believe that they are complaining about a particular office

location of the “Aspen Dental” chain, include concerns regarding quality of care, billing practices, misleading advertising, “upselling” of medical services and products the consumers feel are unnecessary, and unclear or incomplete terms for the financing of dental care.

8. In 2013, the OAG commenced an investigation into “Aspen Dental,” and more specifically, the relationship between ADMI and the Dental Practices.

#### **B. ADMI’s Practice Ownership Model and Business Services Agreements**

9. The primary contractual agreements setting forth the terms of the relationship between ADMI and the Dental Practices are called Business Service Agreements (“BSAs”), which have terms ranging from twenty to forty years, and Practice Development Agreements (“PDAs”).

10. The contracts include, among other things, requirements (i) that the Dental Practices purchase all of their prostheses (dentures) from ADMI and (ii) that they inform ADMI of issues that arise concerning quality of care, including in the event of any disciplinary, medical malpractice or other action initiated against any dentist. When such issues arise, the Dental Practices are called upon to cooperate with and participate in ADMI’s quality assurance and utilization review programs.

11. The contracts between ADMI and the Dental Practices further control the Practice Owner’s ability to practice dentistry and retain patient records for so long as the BSA and/or PDA are in effect and for a period of time after the contracts terminate.

12. If a Dental Practice or ADMI terminates a BSA, or if a Practice Owner wishes to sell a practice, the owner has the choice of practicing outside a “restricted” area or transferring the patients’ records to a “successor” dental practice that has or will have a contract with ADMI.

13. Further, the Dental Practices and Practice Owners are bound by non-competition and non-solicitation agreements with ADMI that effectively prevent the Dental Practices or Practice Owners from owning dental practices that are competitive with *any other* dental practice affiliated with ADMI.

14. In addition to the extensive role ADMI vests in itself through the BSAs and other contractual agreements, ADMI's involvement with the Dental Practices extends even further in practice.

### **C. ADMI's Direct Communications with Dental Practice Staff**

15. ADMI consults with the Practice Owners on how to make their practices more efficient and profitable, and includes in its business support direct training of and communication with clinical and non-clinical staff in the Dental Offices concerning clinical care for patients, including how to increase their offices' revenue through the provision of dental care.

16. For example, ADMI's Director of Hygiene Services sends "Hygiene Service Announcements" to dental hygienists, often encouraging or directing the hygienists to increase the amount of revenue they are generating by selling more products and services to patients and by reaching out to patients that still have credit balances on their accounts so the Dental Office does not have to refund those balances.

17. Examples of ADMI's Hygiene Service Announcements include:

"I am reviewing Hygiene results and am discouraged to see that we fell further behind budget for the year! (-4.3%) I know that all of you are equally as competitive as me...so you can relate to how I hate losing to dentures (+1.4%) My real frustration comes from knowing that if we deliver good comprehensive care- we will close this gap! The current gap is \$52/day per hygienist...less than one Vizilite,<sup>1</sup> less than 2 sites of Arestin,<sup>2</sup> less than one recall patient...you get the idea! Please look at each day's schedule and find the opportunities.

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<sup>1</sup> Vizilite is an enhanced oral cancer screening that uses a chemiluminescent light to identify suspicious lesions. The patient cost is approximately \$65.

<sup>2</sup> Arestin is an antibiotic treatment used for the treatment of periodontal disease.

Did you offer each patient whitening? Did you talk to denture patients about Vizilite? Did you make sure every patient was scheduled for recall? did you offer MI paste as a solution to patients with sensitivity? Fifty two dollars per day...I know we can do this...who is with me??" (Dated June 1, 2011)

18. Similarly, ADMI trains office managers (non-licensed individuals responsible for managing an office's overall operations) on how to communicate with patients regarding their treatment plans and assist them in making decisions about treatment alternatives.<sup>3</sup>

#### **D. ADMI's Policies and Procedures for Dental Practices**

19. ADMI additionally promulgates forms of policies and procedures addressing office and clinical practices, as well as patient consent forms and patient information forms, some of which include clinical information. ADMI has prepared approximately 150 known policies, guidance documents, and forms that are used in, or otherwise concern the operations of, the Dental Practices.

20. These ADMI-created policies, guidance documents, and forms establish an array of clinical practices and protocols. For example, ADMI has prepared a "patient dismissal" form for dentists to complete when "dismissing" patients from their practice and which must be faxed to risk management "to start the dismissal process." The form lists questions the dentist should ask him/herself to determine whether s/he has fulfilled all responsibilities to the patient, and then requests that the reason for dismissal be stated.

21. With the knowledge of and at the request of the Practice Owners, ADMI teaches dentists about "productive scheduling" during its "doctor orientation program." Using this approach, dentists are taught to prioritize "highly productive cases or opportunities," then filling in the gaps with "moderately productive cases," followed by

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<sup>3</sup> All office managers in the Dental Practices were, until January 1, 2014, ADMI employees. During the course of the OAG's investigation, ADMI and some of the Dental Practices decided to have the Dental Practices employ their office managers.

“low production procedures.” Participants are given an exercise to identify high value, medium value, and low value procedures. They are also instructed on ways to increase their productivity, which include prioritizing prosthetic work, such as dentures, and practicing “quadrant dentistry.”

**E. ADMI’s Financial Incentives for Staff to Sell More Dental Services and Products**

22. Under ADMI’s bonus structure for office managers (who at the time were employed by ADMI, not the Dental Practices), managers were eligible for bonuses only if they met certain budget targets for the offices they managed. ADMI would award a bonus calculated as a percentage of the dental office’s gross profits. The express purpose behind the office managers’ bonus system was to create “accountability” for controlling the dental office’s expenses and increasing its profitability. ADMI periodically revised the office manager bonus system and implemented changes in consultation with, but without formal approval from, the Practice Owners.

23. During the timeframe in which ADMI employed the office managers, ADMI’s bonus payment arrangement appears to have constituted an illegal fee-sharing arrangement with a licensed practitioner because the amounts of the office managers’ bonuses were included within the fees paid by the Dental Practices to ADMI.

24. Similarly, dental hygienists receive a monthly bonus based on how much revenue they generate, and while they may legally receive a percentage of profits as Dental Practice employees, this incentive structure was created and implemented without formal approval from, the Practice Owners.

## **F. ADMI's Control and Commingling of Finances**

25. There has been insufficient financial independence or separation between ADMI and the Dental Practices. For example, until very recently, ADMI used a single consolidated banking account for most of the Dental Practices and retained sole control over the account. This account included all monies paid by patients or other payors to the Dental Practices for services rendered. This account would also be used for payment of all Dental Practice expenses, including payment of profits, which for any particular month ADMI would wire from the account to the Practice Owners.

26. ADMI and the Dental Practices did not appropriately structure their fee arrangements, giving ADMI a direct financial interest in the Dental Practices' profitability.

27. ADMI and the Dental Practices have agreements that set forth ADMI's flat fee for the business management services provided, typically for a span of one year. This "flat fee" is then periodically updated or adjusted, such as to reflect a different number of offices supported by ADMI. This annual flat fee to ADMI is in addition to payments the Dental Practices must make to ADMI for expenses ADMI incurs (such as fees related to the central laboratory that fabricates dentures, advertising expenses, and dental supply purchases) that are then allocated or passed through to the Dental Practices ("center expenses").

28. The Dental Practices' financial statements and related documents reflect that in practice, ADMI is not paid a flat fee for its business support services. Rather, ADMI takes no more than an agreed-upon percentage of each office's gross profits each month. This percentage is typically 45% or 50% of an office's gross profits.

## **G. Misleading Use of the “Aspen Dental” Trade Name**

29. Through separate licensing agreements, ADMI licenses the “Aspen Dental” trade name to each of the Dental Practices and then uses that trade name for all signage, advertising, marketing, and communications conducted on behalf of the Dental Practices. Each of the seven distinct and independently owned Dental Practices in New York operate as “Aspen Dental.”

30. Such use of the “Aspen Dental” trade name confuses the fact that these Dental Practices are actually independently owned by licensed dentists who are ultimately responsible for the care provided.

31. As an example, the “Aspen Dental” website does not adequately distinguish between the independently owned Dental Practices, or between the Dental Practices and ADMI. Rather, a website user might incorrectly conclude that there is a single provider of dental care called “Aspen Dental” that has dental offices nation-wide. The Aspen Dental website describes some of the dental services typically offered, a philosophy of dental treatment, information on pricing, financing and refunds, and provides a mechanism for patients to search for offices based on zip code and make appointments at the closest location.<sup>4</sup>

32. Such use of the “Aspen Dental” trade name has the potential to mislead consumers because they may believe that all “Aspen Dental”-branded offices are under common ownership and/or management, and that there is a central “corporate” Aspen Dental office that is ultimately responsible for the care provided at the different dental

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<sup>4</sup> During the course of the OAG’s investigation, ADMI made several revisions to its website and social media accounts to better indicate that there is not a single dental provider called “Aspen Dental.” For example, in or around May 2014, ADMI started listing the names of the Dental Practices that own and operate each of the Dental Offices, and in or around January 2015, the “Aspen Dental” Facebook page referred to the Dental Practices as “Aspen Dental-branded” practices. These interim website and social media revisions do not fully address the concerns raised by the OAG during its investigation.

offices when true accountability for the care provided lies with the owner of that Dental Practice.

33. ADMI has no public-facing presence distinct from “Aspen Dental,” and, with few exceptions, conducts its public-facing activities, including all or nearly all interactions with current and potential patients, through the website and in-person, as “Aspen Dental,” not as ADMI.

34. As a result of the foregoing, ADMI, through its actions and use of the “Aspen Dental” trade name, may be misleading consumers as to the entity legally responsible for patient care and/or creating the appearance that it is a provider of dental care.

### **III. RELEVANT NEW YORK STATE LAW**

#### **A. State Law Governing the Unauthorized Practice of Dentistry and Dental Hygiene**

35. New York law prohibits the practice of a licensed profession, such as dentistry or dental hygiene, by individuals who are not authorized to practice that profession. Education Law § 6602 requires that an individual be licensed (or otherwise authorized) to practice dentistry, and Education Law § 6607 requires that an individual be licensed pursuant to Education Law § 6609 to practice dental hygiene.

36. New York Education Law § 6512 provides that the unauthorized practice of dentistry, dental hygiene, or any other licensed profession, is a Class E felony. Offering to practice in any such profession or holding oneself out as being able to practice is also a Class E felony under Education Law § 6512.

37. New York Business Corporation Law (“BCL”) Article 15 and New York Limited Liability Company Law (“LLC”) Article 12 set forth the only permissible

corporate entities that may practice a profession: Professional Service Corporations (“PCs”) and Professional Service Limited Liability Corporations (“PLLCs”).<sup>5</sup>

38. The BCL and LLC strictly regulate the creation and operation of PCs and PLLCs, providing that a PC/PLLC incorporated to practice dentistry must be entirely owned and controlled by licensed dentists. Pursuant to BCL §§ 1503(a) and 1507 and LLC § 1203, only individuals authorized by law to practice dentistry may form and own a PC/PLLC incorporated to practice dentistry, and, pursuant to BCL §1508(a) and LLC § 1207, only individuals authorized by law to practice dentistry may serve as a director or officer of the PC/ PLLC.

### **B. State Law Governing Sharing of Professional Fees**

39. New York Education Law § 6509-a provides that the license of a person subject to, *inter alia*, the provisions of Article 133 of the Education Law (dentistry) may be revoked, suspended or annulled, or subject to other penalties if that individual: “directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of professional care, or service. . .,” although such fees may be shared with certain other individuals, per Paragraph 41.

40. Similarly, New York Education Law § 6509(9) includes, among the definitions of professional misconduct for any licensed professional: “Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents.”

41. The Board of Regents passed regulations, 8 NYCRR 29.1, providing that “unprofessional conduct” for individuals licensed pursuant to Title VIII of the Education

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<sup>5</sup> This does not include heavily regulated facilities and other entities specifically authorized by law to provide medical care through licensed professionals, such as hospitals established pursuant to Article 28 of the New York State Public Health Law.

Law, which includes dentists and dental hygienists, includes “permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner.” The regulation additionally provides: “*This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a professional licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice . . .*” (emphasis added).

### **C. State Law Governing Deceptive and Fraudulent Business Practices**

42. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York State.

43. New York Executive Law § 63(12) prohibits fraud in the conduct of any business, trade or commerce.

44. ADMI is a general business corporation that is not licensed to practice dentistry or dental hygiene in New York State.

45. ADMI’s role in the Dental Practices’ operations, however, is so extensive and significant that it may be engaging in the unlicensed corporate practice dentistry and dental hygiene through its interactions with the Dental Practices.

46. Further, ADMI’s sharing in the Dental Practices’ profits (as did some of its employees, until recently), may be in violation of New York State’s prohibitions on professional fee-sharing.

47. Moreover, the Dental Practices’ shared use of ADMI’s “Aspen Dental” trade name may misleadingly convey to consumers that each of the seven Dental

Practices, which are in fact independently owned and incorporated by licensed dentists, are instead part of a single entity called “Aspen Dental,” and further enables ADMI to hold itself out as a dental provider.

**NOW, WHEREAS,** ADMI neither admits nor denies the Attorney General’s findings in Paragraphs 3 through 34 above; and

**WHEREAS,** New York laws prohibiting the corporate practice of medicine and fee-splitting between medical practitioners and others confer important consumer protections; and

**WHEREAS,** ADMI has cooperated with the OAG’s investigation; and

**WHEREAS,** the Attorney General is willing to accept the terms of this Assurance under Executive Law Section 63(15) and to discontinue his investigation; and

**WHEREAS,** the parties each believe that the obligations imposed by this Assurance are prudent and appropriate; and

**WHEREAS,** the Attorney General has determined that this Assurance is in the public interest.

**IT IS HEREBY UNDERSTOOD AND AGREED,** by and between the parties that:

#### **IV. PROSPECTIVE RELIEF**

##### **A. Definitions**

48. “Aspen Dental website” shall mean [www.aspendental.com](http://www.aspendental.com), or any subsequent website maintained by or at the direction of ADMI on behalf of the Dental Practices.

49. “Aspen Dental Management, Inc.” or “ADMI” shall mean Aspen Dental Management, Inc. and any of its subsidiaries, parent companies, predecessors, successors, affiliates, franchises, officers, directors, employees, agents, consultants, and independent

contractors.

50. “Business Support Services” shall mean administrative, financial, and other general business services, provided pursuant to contractual agreements, by ADMI to individuals licensed to practice dentistry and/or professional corporations authorized to practice dentistry.

51. “Clinical Staff” shall mean dentists, dental hygienists, and certified dental assistants working in the Dental Offices.

52. “Dental Practice” shall mean any business incorporated and operating in New York State to practice dentistry and any individual licensed to practice dentistry in New York State, including all predecessors, successors and assigns, that has executed a contract with ADMI for it to provide Business Support Services in New York State.

“Dental Practice” as used in this Assurance of Discontinuance shall only include each of the individual Dental Offices operated by the Dental Practice and each owner of the Dental Practice.

53. “Dental Offices” shall mean the facilities in which the Dental Practices provide dental care to patients in New York State.

54. “Effective Date” shall mean the date on which this Assurance is duly executed by ADMI and by the signatory Attorney General.

55. “Practice Owners” shall mean dentists who have an ownership interest in a Dental Practice.

## **B. Scope of ADMI’s Business Support Services**

### ***1. General Requirements***

56. ADMI shall confer with the Practice Owners as needed, but not less than annually, to assess the services requested by Practice Owners and provided by ADMI to their practices, and except as regards the Business Support Services set forth in any

agreement between ADMI and such practice, (a) determine the nature and scope of ADMI's services to be provided going forward and (b) obtain written authorization to provide those services for such period as is approved by the Practice Owner(s). The parties shall document the Practice Owner's decisions in writing.

57. Any authorizations between ADMI and the Practice Owners and/or Dental Practices, whether pursuant to Paragraph 58 or any other agreements, shall not (a) vest ADMI with general decision-making authority, (b) grant ADMI authority to make business decisions or communications that are prohibited under the terms of this Assurance, or (c) otherwise permit ADMI to exercise control over any aspect of the Dental Practices' operations prohibited under the terms of this Assurance.

## ***2. Communications with Dental Office Staff***

58. Unless specifically authorized by the Practice Owner(s) pursuant to Paragraph 59, ADMI shall not communicate directly with: (a) Clinical Staff concerning the provision of dental care, including but not limited to communications regarding treatment planning, increasing sales of services or products, increasing the amount of revenue generated, meeting budget or metric goals, or patient scheduling priorities; or (b) all other Dental Office staff regarding treatment planning, sales of services or products to patients, the amount of revenue generated, budget or metric goals, or patient scheduling priorities.

59. ADMI may communicate with Dental Office staff (Clinical Staff and all other Dental Office staff) concerning the matters provided in Paragraph 58 if such communications are consistent with a prospective written communication plan that is either prepared by, or reviewed and approved by, the Practice Owner no less frequently than once per month. The written communication plan shall specifically set forth:

- a. The Dental Offices (where applicable) that may be contacted;

- b. The time-frame during which such communications may take place, not to exceed 30 days;
- c. A description of the communications that are authorized with respect to each category of employee (*e.g.*, office managers, dental hygienists, and associate dentists) within the Dental Offices and the triggering conditions, if any, that would authorize such communications (*e.g.*, if only upon missing certain metric goals by a certain percentage, or if in connection with an authorized contest);
- d. Any clarifying parameters or limitations on what may be discussed (*e.g.*, that ADMI may not discuss any aspect of treatment planning with Clinical Staff when advising on ways to generate additional revenue);
- e. The manner in which ADMI plans to initiate such communications, such as whether ADMI staff may directly consult with all Clinical Staff on a one-on-one basis regarding clinical care, and whether the Practice Owner will be included in or notified of any particular sorts of communications; and
- f. Which of the metrics tracked by ADMI for the Dental Practice may be directly reported to Dental Office staff (all authorized communications relating to these results, such as advice or other commentary on how to improve on certain measures, must be specifically identified pursuant to subsection (c)).

60. On a monthly basis, ADMI shall provide the Practice Owner with a summary of communications authorized pursuant to the communications plan set forth

in Paragraph 59 that took place with the Practice Owner's staff from the previous month. Such summaries shall include the name of the staff person contacted, or, if the communications were made to all individuals holding a particular staff position, the position of staff persons contacted, and the recommendations that were made relating to treatment planning, generating revenue or sales, and performance on measured metrics, specifically identifying the metric(s) and any clinical procedures, practices or products discussed.

61. ADMI may not, through its communications with Dental Office staff: (a) exercise any control over clinical decision-making; (b) encourage or suggest the use of specific clinical procedures, practices or products unless the communication plan explicitly identifies, and permits the encouragement or suggested use of, those clinical procedures, practices, or products (along with any triggering conditions, pursuant to Paragraph 59(c)); or (c) discourage the use of specific clinical procedures, practices or products unless the communication plan explicitly identifies, and permits the discouragement of, those clinical procedures, practices or products (along with any triggering conditions).

62. No less frequently than once per year, ADMI shall notify all Dental Office staff in writing that they may consult directly with their Practice Owner if they have any questions or concerns about their communications with ADMI concerning the matters set forth in Paragraph 59.

63. If ADMI becomes aware of any unauthorized communications between its staff and Dental Office staff, it shall immediately notify the Practice Owner of that Dental Practice.

64. ADMI shall not sponsor contests or challenges that award or incentivize the Dental Practices or staff working in Dental Offices to increase revenue, reduce costs,

or sell particular clinical services or dental products. ADMI may develop and implement contests and challenges that award or incentivize the Dental Practices or staff working in Dental Offices to increase revenue, reduce costs, or sell particular clinical services or dental products only at the request or authorization of a Practice Owner, but ADMI shall not itself grant prizes or rewards or incur the costs of granting prizes or rewards. In developing and implementing any such authorized contest and challenge, ADMI remains bound by Paragraphs 58 through 63 and may not make any unauthorized communications, as set forth herein, as a means of encouraging or directing Dental Office staff on how to achieve the stated goals of the contest or challenge.

65. None of the foregoing shall limit the scope of communications between ADMI and a Practice Owner or, at the Practice Owner's request, a managing dentist at their Dental Office(s).

### ***3. Dental Practice Policies, Procedures, and Forms***

66. Within 90 days of the Effective Date, ADMI shall provide the Practice Owners with copies<sup>6</sup> of all written policies, procedures, guidance documents, and forms prepared by ADMI that (i) impact clinical and administrative practices and operations in the Dental Offices, (ii) are made available to patients, or (iii) are otherwise utilized by or govern the staff in the Dental Practices and Dental Offices so the Practice Owners may review and then revise, approve or disapprove (as they so determine) the continued use of such documents in their Dental Practices within 120 days of the Effective Date.

67. Any documents provided to Practice Owners pursuant to Paragraph 66 that are disapproved or not affirmatively approved by a Practice Owner within 120 days of the Effective Date will no longer be made available or otherwise applicable to that owner's Dental Practice. Thereafter, ADMI shall not make any new policies,

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<sup>6</sup> Such copies may be provided by any means, including through electronic portals or links to the documents.

procedures, guidance documents, or forms available to Dental Office staff or otherwise applicable to a Dental Practice without the express approval of the applicable Practice Owner, and ADMI will not train or otherwise instruct the staff working in those Dental Offices to follow any practices and procedures not authorized by a Practice Owner. Nothing in this paragraph shall prevent a Dental Practice from adopting its own policies, procedures, guidance documents, or forms.

68. Within 90 days of the Effective Date, ADMI shall implement and maintain a system to track the ADMI-drafted documents used in each of the different Dental Practices and ensure that documents not approved by the Practice Owners pursuant to Paragraphs 66 and 67 are not utilized by, nor govern the operations of, those Dental Practices.

#### ***4. Hiring and Evaluating Clinical Staff***

69. ADMI will not interview applicants seeking employment as Clinical Staff at the Dental Practices beyond an initial screening interview, unless the Practice Owner or, at the Practice Owner's request, a Clinical Staff member designated by the Practice Owner, also participates in the interview.

70. Unless authorized by the Practice Owner, ADMI shall not extend an offer of employment or contract work to any individuals who will be working as Clinical Staff.

71. ADMI shall not sign on behalf of a Dental Practice any contracts or letters of agreement for employment or contract work.

72. ADMI shall not conduct formal performance reviews or evaluations for Clinical Staff relating to their responsibilities and performance within the scope of their employment. The term "formal performance reviews or evaluations" used in the previous sentence includes evaluations concerning quality of care provided, but shall not include

the collection, reporting, and discussion of metric data to the extent such collection, reporting, or discussion is authorized by the Practice Owner pursuant to Paragraph 69.

73. Paragraphs 69 through 72 shall not prevent ADMI from assisting with recruitment of qualified staff, initial screenings of applicants, facilitating interviews with selected applicants, assisting with employment contract negotiations, assisting with the documentation of performance reviews by Practice Owners or Clinical Staff, or otherwise providing administrative support with respect to a Dental Practice's recruitment or hiring.

### ***5. Dental Practices' Business Operations***

74. ADMI shall not make any decisions on behalf of the Dental Practices that directly or indirectly impact clinical care. While ADMI may make suggestions for best business practices, all such decisions must be presented to the Practice Owners, and no action will be taken until the Practice Owner or, at the Practice Owner's request, a designated dentist for the impacted Dental Office(s), affirmatively responds with a decision on how to proceed.

75. Notwithstanding Paragraph 74, the following decisions concerning Dental Practice or Dental Office-wide practices shall only be made by the Practice Owner or, at the Practice Owner's request, a senior managing dentist (i.e., the Managing Clinical Director) for the impacted Dental Office:

- a. Budgets for the dental offices;
- b. What treatments and services the Dental Practice and/or Dental Office will offer to patients and the clinical criteria, if any, dictating when those treatments and services may be offered;
- c. Whether any default treatment planning options may be incorporated into billing or any other software or systems provided by ADMI, and if so, which such options may be

incorporated;

- d. The Dental Practice's and/or Dental Office's standard fees for patient treatments and services;
- e. Salaries, bonuses and other incentives for staff (clinical and non-clinical) working in the Dental Offices;
- f. What dental equipment and dental products will be used in the Dental Offices;
- g. Whether and what financing options will be available to patients;
- h. Insurance plan participation;
- i. How much time will be allocated for dental services and procedures in the scheduling system, or the process by which such time allocations will be made (*e.g.*, if associate dentists may determine how much time they need within certain parameters set by the Practice Owner);
- j. Whether certain types of patients will be prioritized in the scheduling system, and if so, the bases on which they may be prioritized (*e.g.*, payor type, dental services requested, new vs. existing patients); and
- k. Appropriate staffing levels.

76. None of the foregoing shall prevent ADMI from executing, or assisting with the execution and implementation of, a Practice Owner's business decision once direction for a specific course of action is given by the Practice Owner or designated dentist, consistent with all other limitations set forth herein, including but not limited to those concerning communications in Paragraphs 58 through 65.

77. ADMI shall not prevent the Dental Practices from adopting any practices, procedures, patient fees, or otherwise making business decisions, nor shall ADMI otherwise interfere with the Practice Owners' ability to make and execute such business decisions, on the grounds that such changes would result in inconsistencies across the Dental Practices or would otherwise negatively impact other Dental Practices. The foregoing shall not prohibit ADMI from enforcing the terms of its contracts with the Dental Practices, including any terms imposing affirmative obligations on the Dental Practices, such as those concerning the non-disclosure of trade secrets.

**C. No Limitations on Practice Owners' Practice of Dentistry**

78. ADMI shall not prohibit or restrict Practice Owners or Dental Practices from owning, managing, controlling, or being employed by a dental practice, or otherwise practicing dentistry in any geographic location and for any period of time, provided that such practices may not use the "Aspen Dental" trademark without ADMI's consent. This includes, but is not limited to, restricting a Practice Owner's ability to practice within any distance of another ADMI-supported practice.

79. ADMI shall not in any manner restrict a Practice Owner's or Dental Practice's ability to retain patient charts and records, or to solicit or attempt to solicit its existing patients or those of other ADMI-supported Dental Practices, if the agreements for ADMI to provide Business Support Services are terminated.

80. The foregoing shall not restrict ADMI from imposing reasonable restrictions with respect to the Practice Owners' ability to work for or with a competitive Dental Services Organization ("DSO") or dental practice affiliated with a competitive DSO.

**D. ADMI and the Dental Practices' Finances**

81. ADMI shall not: (i) protect or agree to protect a Dental Practice against

financial losses; (ii) assume or agree to assume any of a Dental Practice's costs of employing Clinical Staff, including salaries and bonuses; (iii) waive or agree to waive any amounts owed to ADMI by the Dental Practices or refund any amounts paid to ADMI by the Dental Practices solely to cover the costs of employing Clinical Staff; or (iv) prevent the Practice Owners from having full and complete control over their revenues, profits, incomes, disbursements, bank accounts, and other financial matters and decisions, subject to Paragraph 84.

82. All new loans extended by ADMI to the Practice Owners or Dental Practices shall be executed through separate contracts setting forth the terms of the loan. Within 90 days of the Effective Date, any existing undocumented loans to the Dental Practices shall be memorialized in a written agreement that sets forth the terms of the loan and the balance owed.

83. Any contractual provisions or agreements with ADMI that prevent the Practice Owners from having full and complete control over their revenues, profits, incomes, disbursements, bank accounts, and other financial matters and decisions are void and unenforceable, except to the extent necessary for ADMI to collect receipts, pay bills and otherwise fulfill its obligations under the existing Business Services Agreements until new Business Services Agreements fully compliant with this Assurance are executed, which shall occur by September 30, 2015. Within 30 days of the Effective Date, except as provided directly below, ADMI shall not maintain a consolidation account for any of the Dental Practices. ADMI may use consolidation accounts only for (a) receipt of dental or medical insurance payments to the Dental Practices and (b) electronic patient payments transmitted directly to ADMI through the Aspen Dental website. ADMI may only deposit and maintain payments for a Dental Practice's services in the consolidation account if the Dental Practice and ADMI enter into an

agreement (which may be the Business Services Agreement) that specifically authorizes ADMI to deposit and maintain payments in the consolidation account and which is in full compliance with all other terms herein concerning the Dental Practices' complete control over their respective revenues and profits. ADMI shall not release funds held in the consolidation account except to an insurance company or directly to the Dental Practice.

84. Except as set forth in Paragraph 83, all payments made and owed to the Dental Practices for dental services rendered in their practices shall be deposited directly into bank accounts in which the Dental Practice: (a) is an account holder; (b) has direct and unlimited access to its funds; and (c) has full control with respect to deposits, withdrawals, and access by third parties, such as ADMI.

**E. Billing for Business Support Services Provided to Dental Practices**

85. ADMI shall not receive compensation or payments of any kind from the Dental Practices that are dependent upon a Dental Practice's profits, revenues, deposits, or any other income or earnings (herein collectively and individually referred to as "revenues and profits"), or otherwise share in the Dental Practices' fees for professional services rendered. This includes, but is not limited to, compensation constituting a specified percentage of a Dental Practice's revenues and profits.

86. The parties acknowledge and agree that the sources of compensation or payments to be made by the Dental Practices to ADMI are the revenues and profits generated by the Dental Practices.

87. All guarantees from ADMI to the Dental Practices that the practice or one or more of its Dental Offices may retain a certain percentage of revenues and profits are void. ADMI shall not make any guarantees to the Dental Practices that they may retain a certain percentage of the revenues and profits generated by the practice or its

offices. ADMI's fee for its Business Support Services and any other charges to the Dental Practices shall not be limited or constrained in a manner that is dependent upon, or constitutes a percentage of, the practice's revenue and profits.

88. The fee charged for ADMI's Business Support Services may be renegotiated as deemed appropriate by the parties, but no more frequently than as permitted herein.

- a. The Business Support Services fee(s) may be negotiated no more frequently than on a quarterly basis (once every three months) for four years starting on the Effective Date (i.e., for a period of four calendar quarters commencing with the calendar quarter which begins after the Effective Date), and no more frequently than on a semi-annual basis (once every six months) thereafter. If ADMI complies with the provisions of Paragraphs 85 through 90 during the four-year period beginning after the Effective Date, it may continue to renegotiate fees thereafter on a quarterly basis.
- b. A fixed fee may be renegotiated by ADMI and the Dental Practices within the quarterly or semi-annual fee period based on: (i) increases or decreases in the number of offices supported, (ii) changes in the number, scope or types of services provided by ADMI, (iii) temporary office closures, such as those resulting from the absence of the dentist(s) or due to force majeure, or (iv) increases or decreases in the number of dentists in the office to the extent such changes can be demonstrated to have a significant impact on the value of the

services provided by ADMI to the Dental Practice during the time period for which the fixed fee is being adjusted. Such adjustments must be reasonable, and will be memorialized in writing setting forth the reasons for the change to the fixed fee and signed by ADMI and the Dental Practice.

89. ADMI shall not waive any portion of the Business Support Services fee owed by the Dental Practices except pursuant to a protocol subject to approval by the New York State Office of the Attorney General (“OAG”) that sets forth the financial bases upon which such waivers may be granted. Such bases shall not include a Dental Practice’s revenues and profits for a particular period of time, such as monthly profits, but are to be based on the entire financial condition of the Dental Practice. All such waivers shall be memorialized in writing setting forth the basis for the waiver and the amount waived.

90. Except as set forth herein, ADMI shall not provide any credits, add-backs, or adjustments to any of the Dental Practices’ expenses (including those deemed “Center Expenses” under any agreements between ADMI and the Dental Practices) for the purpose of adjusting the fees owed by the Dental Practices or to ensure the Dental Practices retain a certain percentage of revenues and profits. Notwithstanding the foregoing, if the Dental Practices are entitled to credits, add-backs or adjustments based on valid circumstances, such as vendor credits or ADMI’s good faith billing errors, and such circumstances are supported by documentation, such credits, add-backs or adjustments may be provided.

91. All fee payments from the Dental Practices to ADMI for its Business Support Services, including but not limited to any fixed fee monthly installment payments, will appear as separate line-items, as operating expenses for the Dental Practices on their

ADMI-prepared: (i) budgets, (ii) profit and loss statements, (iii) Practice Owner summaries, and (iv) additional or subsequent financial statements that reflect the Dental Practices' expenses.

92. The Dental Practices' financial statements prepared by ADMI, including the profit and loss statements, shall reflect how the Dental Practice's Gross Profit is calculated based on the revenue generated and the expenses incurred.

93. All fee payments from the Dental Practices to ADMI for its Business Support Services, including but not limited to any fixed fee monthly installment payments, will be distinct and separate payments and will not be bundled or combined with other payments for monies owed by the Dental Practices to ADMI unless clearly documented and itemized.

94. Any fixed fees for Business Support Services will be paid by the Dental Practices to ADMI in pre-determined, budgeted monthly installments, subject to adjustments authorized by Paragraphs 88 through 90. While the amount of each installment may vary, the sum of the monthly installments will equal the negotiated fixed fee for the quarterly or semiannual period.

## **F. Use of "Aspen Dental" Trade Name**

### ***1. Website Reforms and Disclaimer***

95. Within 90 days of the Effective Date, ADMI shall post an explanation in permanent text (i.e., not a rotating banner) on the Aspen Dental website that: (i) there is no single provider of dental care called "Aspen Dental"; (ii) Aspen Dental Management, Inc. provides administrative and business support services to dental practices that are independently owned and operated by licensed dentists, (iii) ADMI licenses the "Aspen Dental" brand name to the independently owned and operated dental practices that use its business support services; (iv) ADMI does not own or operate the dental practices,

employ or in any way supervise the dentists providing dental care, and that control over the care provided is the sole responsibility of the independent practice and the dentists they employ; and (v) services and office practices may vary across dental practices, and patients should contact the dental offices directly for all questions concerning their dental treatment. This text shall be prominently posted on the webpage(s) explaining what “Aspen Dental” is, including the webpage currently located at <https://www.aspendental.com/about#about-company-overview>, as well as on any other webpage(s) as deemed appropriate by ADMI.

96. Within 90 days of the Effective Date, ADMI shall prominently post an explanation in permanent text at or near the top of each webpage on which consumers can search for Dental Offices, including the “Find A Dental Office” webpage, currently located at <https://www.aspendental.com/find-an-office>, and the “Schedule an Appointment” webpage, currently located at <https://www.aspendental.com/schedule-an-appointment#step-two>, advising that: (1) Aspen Dental-branded dental practices are independently owned and operated by licensed dentists, and (2) dental services and office practices may vary across dental practices.

97. Within 90 days of the Effective Date, ADMI shall post the following text at the bottom of each webpage on the Aspen Dental website, in prominent lettering: “Aspen Dental-branded dental practices are independently owned and operated by licensed dentists. For more information about the relationship between Aspen Dental Management, Inc. and the branded dental practices, click here.” The word “here” shall be hyperlinked to the page containing full disclaimer language required pursuant to Paragraph 95.

98. The Aspen Dental website shall continue to maintain individual webpages for each Dental Office. Such webpages shall display: (a) the unique legal or

assumed name of the Dental Practice that owns and operates that office at the top of the webpage, in prominent lettering, as defined in Paragraph 99; (b) the owner(s) of that Dental Practice; (c) the dentists who provide care at that particular Dental Office; (d) any specific representations, forms, policies, or other information as requested by the Dental Practice, pursuant to Paragraph 101; (e) contact information for that Dental Office; and (f) a list of all Dental Offices owned and operated by that Dental Practice, or a clearly labeled link to another webpage providing this information.

99. “Prominent lettering” shall mean text that is: (a) in a larger font than its surrounding text, and (b) distinguished by font color, font type, font style (i.e., bold or italics), and/or any other special effect that serves to highlight the text in relation to its surrounding text.

100. ADMI shall require Practice Owners to review all statements and information displayed on the webpage(s) for the Dental Office(s) owned by their Dental Practice and advise if they approve that content within 60 days of the Effective Date. ADMI must remove or revise all statements and information not approved by the Practice Owners within 30 days of the Practice’s Owner’s notification. Review and approval must also be obtained from a Practice Owner before any future substantive changes are made to the webpage(s) for that owner’s office(s).

101. ADMI shall permit Practice Owners to customize and control the information conveyed on the webpage(s) for the Dental Office(s) that they own and operate with respect to the dental care provided, including, but not limited to, payment policies, dental services provided, hours of operation, pricing and discounts, and patient forms. Nothing herein shall prohibit ADMI from imposing reasonable limitations on the quantity of information included on the Dental Office webpages or from imposing other reasonable non-substantive limitations concerning their quality, including grammar,

layout and appearance of the webpage(s).

102. Where ADMI is conducting business or otherwise acting on its own behalf instead of as an agent for the Dental Practices through the Aspen Dental website, it shall do so as ADMI and not as “Aspen Dental.” This includes, but is not limited to, recruitment of ADMI employees.

***2. Use of the “Aspen Dental” Trade Name on the Aspen Dental Website, Social Media Accounts, and Marketing and Advertising Materials***

103. Within 90 days of the Effective Date, ADMI shall conduct a review of the entire Aspen Dental website and all social media accounts<sup>7</sup> maintained by or at the direction of ADMI on behalf of the Dental Practices and remove or revise statements that could be understood to suggest, within the context of the Aspen Dental website and the webpage(s) containing those statements, including the changes outlined herein, that “Aspen Dental” is a single entity that provides dental treatment or is itself a provider of dental services. Neither the Aspen Dental website nor the social media accounts shall state or indicate that “Aspen Dental” provides dental treatment or is itself a provider.

104. Within 90 days of the Effective Date, ADMI shall remove or revise all statements on the Aspen Dental website and all social media accounts maintained by or at the direction of ADMI on behalf of the Dental Practices regarding the dental treatment that patients will receive at “Aspen Dental.” The Aspen Dental website, all social media accounts, and any advertising or marketing materials for the Dental Practices shall no longer include statements or representations regarding the dental treatment that patients will receive at “Aspen Dental.” However, the Aspen Dental website, social media accounts, and any advertising or marketing materials may offer descriptions of what a patient visit to an Aspen Dental-branded dental practice may generally involve, as determined by the treating dentist, and the services or treatment plans generally offered

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<sup>7</sup> Such social media accounts include, but are not limited to, Facebook, Twitter, and Instagram.

by the Dental Practices.

105. ADMI's marketing or advertising materials, including but not limited to all print, television and future radio advertisements,<sup>8</sup> shall: (1) convey that Aspen Dental-branded dental practices are independently owned and operated by licensed dentists, and (2) direct consumers to visit the Aspen Dental website for a list of all independent dental practices and their locations. This information shall be incorporated into the advertising and marketing materials in a manner that makes clear, in the context of the advertising considered as a whole, that "Aspen Dental" is not a single entity that provides dental treatment and is not itself a provider.

106. The guidelines set forth in Paragraph 105 do not apply to the extent that a print, television, or radio advertisement is conducted under a Dental Practice's legal name and not under the "Aspen Dental" trade name.

107. None of the foregoing provisions shall prevent the Aspen Dental website, social media accounts, or marketing or advertising materials from containing representations regarding dental treatment in connection with specifically named Dental Practices to the extent a Dental Practice affirmatively decides to make such representations under its own unique name.

### ***3. Dental Office Signage, Forms, and Communications***

108. Nothing herein shall prevent the Dental Practices from continuing to use building signage with the words "Aspen Dental." However, when ADMI's Business Support Services include providing Dental Office signage, ADMI shall post the Dental Practice's legal name on the Dental Office's buildings, on or adjacent to the entrances, so it is easily visible by patients upon entry to the facilities. Where ADMI is not responsible for providing Dental Office signage, it will make commercially reasonable efforts to

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<sup>8</sup> ADMI currently publishes one radio advertisement, which is not covered by this paragraph.

cause the Dental Practice's legal name to be posted on the Dental Offices' building, on or adjacent to the entrances, so it is easily visible by patients upon entrance to the facilities.

109. ADMI may continue to provide Dental Practices with documents and forms containing the "Aspen Dental" trademark. However, any such documents and forms prepared by ADMI that may be presented to patients must also display the Dental Practice's legal name at or near the top of the page in prominent lettering, as defined in Paragraph 99.

110. ADMI shall make good faith efforts to ensure that Dental Practices operating under the "Aspen Dental" trade name provide patients upon their first visit, and thereafter make available to patients upon request, a form containing the information outlined in Paragraph 95, which ADMI shall prepare and make available to the Dental Practices.

111. ADMI shall train, require, and use reasonable best efforts to ensure its employees, when communicating with a Dental Practice's patients, either (a) identify by name the practice on behalf of which they are communicating, or (b) identify themselves as ADMI employees.

#### **G. Enforcement**

112. To oversee compliance of Sections IV.D and IV.E of this Assurance, all financial statements for the Dental Practices prepared by or at the request of ADMI, including monthly profit and loss statements and any other audited or unaudited financial statements, along with all written agreements reflecting changes to the Business Support Services fee, will be submitted to the Monitor, an independent individual or entity selected jointly by the OAG and ADMI and paid for and contracted by ADMI. Except for communications with the OAG, the Monitor shall be obligated to hold any information provided pursuant to this Assurance in strict confidence. The Monitor and ADMI may

agree that all information provided by ADMI is presumed to be confidential and proprietary information.

113. The Monitor shall submit a report to the OAG on an annual basis, for no fewer than four years, assessing ADMI's compliance with Sections IV.D and IV.E of this Assurance. During the first two years after the Effective Date, the Monitor will, in particular, assess whether ADMI has complied with Paragraphs 85 through 90. The Monitor's first report shall be submitted to the OAG twelve months from the Effective Date.

114. ADMI shall disclose to the Monitor how ADMI is compensated by the Dental Practices for its Business Support Services (*e.g.*, whether the Business Support Services fee is an established fixed fee for services provided over a defined period of time, or based on the cost of the services provided). If the Business Support Services fee is a fixed fee, ADMI shall disclose the basis for the fixed fee to the Monitor. While such disclosure may initially be provided in narrative form, ADMI shall cooperate in good faith with the Monitor to provide other documentation or support for the basis of the Business Support Services fee as deemed reasonably necessary by the Monitor to determine the fee does not constitute a percentage of, or is otherwise dependent upon, a Dental Practice's revenues and profits. If ADMI objects to a request by the Monitor as unreasonable, it shall notify the OAG in writing, setting forth the basis of the objection and proposing an alternative method of satisfying the Monitor's request, as appropriate. The OAG shall review and consider ADMI's objection within 30 days and negotiate in good faith with ADMI to resolve ADMI's objection. If notwithstanding the OAG's efforts, ADMI still objects, ADMI nevertheless shall accede to the Monitor's request.

115. ADMI shall make members of its accounting department available to the

Monitor, and will provide all other financial statements (for ADMI or the Dental Practices) prepared by or at the request of ADMI or the Dental Practices, as deemed reasonably necessary by the Monitor. For any line item, the Monitor shall have the right to review all invoices, utilization data, or any other relevant information to determine the basis for those charges as reasonably necessary to assess compliance with Sections C and D of this Assurance.

116. The documents that ADMI sends to the Monitor remain the property of ADMI. The contract between ADMI and the Monitor shall require the Monitor to provide the OAG with copies of any and all documents submitted by ADMI upon the OAG's request, but only after receiving ADMI's consent to provide the requested documents. ADMI's failure to consent within 30 days of the OAG's request or its decision to withhold the documents shall constitute a violation of the Assurance.

117. Within 30 days of the Effective Date, ADMI shall submit to the OAG the names of three individuals and/or entities that do not currently perform any accountancy, consultant, or other work on behalf of ADMI or, to the best of its knowledge, the Dental Practices to serve as a Monitor. The OAG may then reject any or all of the suggested Monitors on the grounds that they are not qualified and/or sufficiently independent to perform the duties required under the Assurance.

118. Within 180 days of the Effective Date, ADMI shall submit to the OAG a letter certifying and setting forth its compliance with this Assurance, signed by ADMI's Chief Executive Officer ("CEO"). One year after the Effective Date, ADMI's CEO shall certify as to ADMI's ongoing compliance with all provisions of the Assurance, and shall so certify annually thereafter, for no fewer than three years from the Effective Date.

119. ADMI's Chief Financial Officer shall certify the accuracy of all financial

statements and documents submitted to the Monitor and/or the OAG.

120. The OAG recognizes there may be changes in the future to New York State laws or regulations affecting the practice of dentistry that would permit ADMI and the Practices to engage in conduct otherwise prohibited by this Agreement. In the event of such a change, ADMI shall advise the OAG in writing on the change in law and its impact on the terms of this Agreement and request any appropriate change to the terms of this Agreement. The OAG shall consider ADMI's request in good faith and respond within 30 days. If the OAG rejects ADMI's request, the OAG agrees that ADMI may commence an action in New York State Supreme Court seeking a judicial declaration of the impact in the change in law or regulation and relief from the specific terms of this Agreement relating to the change in law or regulation.

#### **V. CIVIL PENALTIES**

121. Within 30 days of the Effective Date, ADMI shall pay \$450,000 to the OAG as a civil penalty. Such sum shall be payable by check to "State of New York Department of Law."

#### **VI. LIQUIDATED DAMAGES**

122. If ADMI violates any provision of this Assurance, does not provide information required pursuant to the Assurance, or does not provide timely consent to the release of documents by the Monitor pursuant to Paragraph 116, the OAG may elect to demand that ADMI pay liquidated damages of \$2,000 per day for such non-compliance or failure to provide requested information. Within the first two years after the Effective Date, in the event that either the Monitor or the OAG determine that ADMI has violated any of the provisions contained in Paragraphs 85 through 90, the OAG may elect to demand that ADMI pay liquidated damages of \$50,000 per violation. Before liquidated damages may be imposed, the OAG shall give ADMI written notice that ADMI may be

subject to liquidated damages under this Paragraph. In the event that ADMI does not cure the violation or provide the requested information within ten (10) days of receipt of the OAG's written notice, the OAG may impose liquidated damages pursuant to this Paragraph. The damages period shall commence on the date that ADMI receives the OAG's written notice and end on the date that ADMI cures the violation or provides the requested information.

## **VII. GENERAL PROVISIONS**

123. ADMI's Representations: The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by ADMI and its counsel and the OAG's own factual investigation as set forth in the above Findings. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

124. Communications: All communications, reports, correspondence, and payments that ADMI submits to the OAG concerning this Assurance or any related issues is to be sent to the attention of the person identified below:

Elizabeth Chesler, Esq.  
Assistant Attorney General  
Health Care Bureau  
Office of the New York State Attorney General  
120 Broadway  
New York, New York 10271

125. Receipt by the OAG of materials referenced in this Assurance, with or without comment, shall not be deemed or construed as approval by the OAG of any of the materials, and ADMI shall not make any representations to the contrary.

126. All notices, correspondence, and requests to ADMI shall be directed as follows:

Daniel J. French  
Gabriel M. Nugent  
Hiscock & Barclay

One Park Place  
300 South State Street  
Syracuse, NY 13202

127. Valid Grounds and Waiver: ADMI hereby accepts the terms and conditions of this Assurance and waives any rights to challenge it in a proceeding under Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

128. No Deprivation of the Public's Rights: Nothing herein shall be construed to deprive any member or other person or entity of any private right under law or equity.

129. No Blanket Approval by the Attorney General of ADMI's Practices: Acceptance of this Assurance by the OAG shall not be deemed or construed as approval by the OAG of any of ADMI's acts or practices, or those of its agents or assigns, and none of them shall make any representation to the contrary.

130. Monitoring by the OAG: To the extent not already provided under this Assurance, ADMI shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance. ADMI may request an extension of particular deadlines under this Assurance, but OAG need not grant any such request. This Assurance does not in any way limit the OAG's right to obtain, by subpoena or by any other means permitted by law, documents, testimony, or other information.

131. No Limitation on the Attorney General's Authority: Nothing in this Assurance in any way limits the OAG's ability to investigate or take other action with respect to any noncompliance at any time by ADMI with respect to this Assurance, or ADMI's noncompliance with any applicable law with respect to any matters.

132. No Undercutting of Assurance: ADMI shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph

affects ADMI's (a) testimonial obligations, or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission by ADMI of any: (i) liability, or (ii) finding set forth herein.

133. Under Executive Law Section 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

134. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

135. If a court of competent jurisdiction determines that ADMI has breached this Assurance, ADMI shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

136. None of the parties shall be considered to be the drafter of this Assurance or any provision for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Assurance was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representation other than those contained in this Assurance.

137. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

138. No representation, inducement, promise, understanding, condition, or

warranty not set forth in this Assurance has been made to or relied upon by ADMI in agreeing to this Assurance.

139. This Assurance contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties, and the Assurance is not subject to any condition not provided for herein. This Assurance supersedes any prior agreements or understandings, whether written or oral, between and among the OAG and ADMI regarding the subject matter of this Assurance.

140. This Assurance may not be amended or modified except in an instrument in writing signed on behalf of all the parties to this Assurance.

141. The division of this Assurance into sections and subsections and the use of captions and headings in connection herewith are solely for convenience and shall have no legal effect in construing the provisions of this Assurance.

142. Binding Effect: This Assurance is binding on and inures to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the OAG. "Successors" includes any entity which acquires the assets of ADMI or otherwise assumes some or all of ADMI's current or future business.

143. Effective Date: This Assurance is effective on the date that it is signed by the Attorney General or his authorized representative (the "Effective Date"), and the document may be executed in counterparts, which shall all be deemed an original for all purposes.

AGREED TO BY THE PARTIES:

Dated:

21<sup>st</sup> of June 15, 2015

Aspen Dental Management, Inc.

By:   
ROBERT A. FONTANA  
Chief Executive Officer

Dated: New York, New York

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

LISA LANDAU  
Health Care Bureau Chief

By:   
ELIZABETH R. CHESLER  
Assistant Attorney General  
Health Care Bureau