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September 15, 2017

BY HAND

Docket Clerk, Hearings and Appeals  
Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118-6200

Re: Massachusetts Dental Society v. Dental Service of Massachusetts, Inc.,  
d/b/a Delta Dental Plan of Massachusetts, Docket No. B2017-01

Dear Sir or Madam:

Enclosed for filing in the matter referred to above are Respondent's Pre-Hearing Memorandum and an Appendix of Exhibits To Respondent's Pre-Hearing Memorandum. I am separately providing each member of the Review Board with courtesy copies of each filing.

Thank you for your attention to this filing.

Very truly yours,

Michael A. Walsh

MAW2/jjc  
Enclosures

cc: Jean F. Farrington, Esq.  
Samuel Furgang, Esq.  
Samuel Leadholm, Esq.  
Jack A. Eiferman, Esq.

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As explained below, the Review Board is without jurisdiction over the Dental Society's Petition for four separate reasons. First, the Petition presents no "dispute or controversy" within the meaning of Section 12, because it does not allege any justiciable claim. Second, the relief sought by the Petition is not directed primarily against DSM, but rather against a for-profit subsidiary of DSM that was incorporated under G.L. c. 175, not under G.L. c. 176E. The Review Board has no statutory authority to grant such relief. Third, the Dental Society does not have standing to obtain any relief upon whatever claim its Petition alleges. Finally, the claims in the Dental Society's petition are barred by the limitations period established by Section 12. For each of these reasons, the Society's Petition should now be dismissed under 801 C.M.R. § 1.01(7)(g)(3).

### **BACKGROUND**

Respondent DSM is a non-profit "dental service corporation" organized in 1966 under Chapter 176E of the General Laws. As originally enacted, Chapter 176E served primarily as a means for ensuring that dentists were promptly paid for the services that they rendered, *in lieu* of having to collect their fees directly from patients. The statute originally mandated that dental service corporations be controlled by the dental profession, through its requirement that a majority of the members of any dental service corporation's board be approved by a "dental society," as defined by the statute. At the time of the statute's enactment, Petitioner MDS was the only "dental society" that met the statutory definition. Thus, through its control of a dental service corporation's board, the Society effectively was able to control the fees that dentists would receive for their services to subscribers of non-profit dental service plans.

Presumably recognizing that this arrangement could easily be abused, in 1981 the legislature removed the Society's control over DSM and the dentists' own fee schedules by

eliminating the requirement that a dental service corporation's board members be approved by the Society. As amended, the statute expressly provided that a majority of the board members of a dental service corporation could not be providers of care. In 1986, following this restructuring of the statute, DSM joined the Delta Dental Plans Association ("DDPA"). DSM has operated its commercial dental benefits business in the Commonwealth of Massachusetts under the trade name Delta Dental of Massachusetts ever since, providing dental insurance plans and third party administrative services primarily to Massachusetts-based employers. Its original product was an indemnity-like plan called the "Delta Dental Premier" plan. In accordance with the statutory framework prescribed by Chapter 176E, the Premier plan is supported by a network of "participating dentists," as defined by the statute. G.L. c. 176E, § 1. DSM has entered into agreements with each of these participating dentists (or their group practices) pursuant to which they provide services to subscribers to the Premier plan. Those agreements are subject to review and approval by the Division. G.L. c. 176E, § 4.

Over the past several years, the market for health insurance products (including dental insurance products) has changed dramatically. As underlying medical and dental costs have skyrocketed, the cost of health and dental insurance products has likewise increased dramatically. Increasingly, the employers who purchase these products are demanding that they be made available at lower cost. In response to this demand, indemnity plans have become increasingly rare, as insurers have developed lower cost products incorporating health maintenance organization ("HMO") and preferred provider organization ("PPO") models. As a result of these marketplace trends, a large number of carriers now offer PPO dental plans in the Massachusetts marketplace, including, among others, Aetna, Altus (a for-profit subsidiary of

nonprofit Delta Dental of Rhode Island), Ameritas, Assurant, Cigna, Dental Network of America, DenteMax, Guardian, Humana, MetLife, United Concordia, and United HealthCare.

In such a competitive marketplace, DSM's singular status as a dental service corporation<sup>1</sup> puts it at a significant disadvantage due to the restrictions imposed by Chapter 176E. Most significantly, DSM is not free to set the fees that it will pay to dentists under its plans because those fees, and the methodology for setting them, are subject to public hearing and approval by the Division. G.L. c. 176E, § 4. Under the methodology that the Division has approved, DSM has been required since 2011 to increase its fees on an annual basis at the same rate as increases to the national dental consumer price index<sup>2</sup> – even though the market is demanding lower-cost products that DSM's competitors are offering. From 2012 through 2017, the reimbursement rates that DSM pays to providers increased by 16.4%.

DSM's competitors, on the other hand, operate primarily as Chapter 175 insurance carriers, and therefore are not subject to Chapter 176E. Those competitors are free to – and have – implemented measures to control the cost of their products, in large part by controlling the reimbursement rates paid to providers. Unconstrained by the fee methodology that DSM is required to use under Chapter 176E, the provider fees paid by its competitors have increased at rates materially below the increases experienced by DSM from 2011 through 2015, and in some of those years certain of DSM's competitors did not increase provider fees at all.<sup>3</sup>

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<sup>1</sup> DSM was and remains today the only dental service corporation established under Chapter 176E. Accordingly, DSM is the only dental carrier in Massachusetts that is subject to Chapter 176E's unique statutory constraints and to the mandatory provider fee methodology approved by the Division.

<sup>2</sup> This methodology was approved in response to a petition filed by the Dental Society in July 2008. Ex. A. The Society challenged two different rate-limiting mechanisms that DSM had used to contain cost increases. As the result of that challenge, on April 14, 2009, the Division ruled that DSM could no longer use those cost containment measures. Ex. B.

<sup>3</sup> In addition to being statutorily inhibited from controlling the escalation of reimbursement rates, DSM, as a dental service corporation subject to Chapter 176E, is required to enter into provider agreements with "every registered

Operating in such an increasingly competitive marketplace, but unable to compete on a level playing field due to its status as a dental service corporation subject to Chapter 176E, in 2014 DSM formed a wholly owned subsidiary, DSM Massachusetts Insurance Company, Inc. (“DMIC”). Unlike DSM, DMIC is incorporated as a for-profit insurance carrier under Chapter 175, Ex. C, and therefore is not subject to the restrictions imposed by Chapter 176E. DMIC has been offering dental insurance plans in Massachusetts since late 2014.<sup>4</sup> In 2016, DMIC began the process of developing a PPO dental insurance plan that could compete more effectively in the market with the for-profit PPO plans offered by DSM’s competitors. In November 2016, DMIC notified the dentist community of the formation of a new provider network for its PPO product, and provided dentists with contract forms that could be executed by those dentists who wished to participate in that network. Ex. D. The notices stated that “beginning in 2017, administration of all Delta Dental of Massachusetts business will be consolidated into DMIC,” and that the products would be “transitioned to DMIC over the next several years.” Ex. D at 1, 3.

These statements raised questions among some dentists as to whether and for how long DSM would continue to offer its dental service plans after DMIC began offering its new PPO product. After consultation with the Division, on January 10, 2017, DMIC and DSM sent a letter to all recipients of the original notification. Ex. E. The January 10 letter, which the Division reviewed and approved in advance, expressly stated that its purpose was “to clarify any

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dentist” who resides or conducts a practice in any city or town where DSM does business, and who wishes to join DSM’s networks. G.L. c. 176E, § 7. Since DSM does business throughout the Commonwealth, this “any willing provider” requirement means that DSM cannot exclude any dentist from its provider networks. DSM’s competitors, on the other hand, are free to create more selective networks of preferred providers that are less costly to administer.

<sup>4</sup> In late 2014, DMIC began offering individual and group EPO (“Exclusive Provider Organization”) products to the marketplace under the “Delta Dental” brand name, both on and off the Massachusetts Health Connector. The first Delta Dental EPO policies written by DMIC took effect in January 2015. By the end of 2015, DMIC insured more than 30,000 members throughout the Commonwealth, through both individual and group policies. This figure grew to over 40,000 in 2016.

confusion” that resulted from the original notifications. To that end, the January letter explained that

The current Delta Dental of Massachusetts PPO and Premier networks are administered by Dental Service of Massachusetts, Inc. (“DSM”). If you presently participate in the Premier and/or PPO networks, your existing provider agreements are with DSM, and these agreements will not be affected by any provider agreements for the DMIC network. All existing DSM Delta Dental Premier and Delta Dental PPO provider agreements (and fee schedules) will continue to apply whenever you see members with PPO, Premier, or PPO Plus Premier plans issued by DSM.

Ex. E at 1.

On January 11, 2017, DSM and DMIC provided the Dental Society with written responses to various written questions that the Society had propounded to them, Ex. F, and the Dental Society immediately posted these responses on its website. Among the Society’s questions and the answers provided by DSM and DMIC were the following:

10. Is Delta currently marketing/selling the [DSM] Premier product to accounts?

Yes. DSM will continue to market and sell Premier products to Massachusetts employers. Additionally, Premier products will continue to be marketed by other Delta Dental companies to out-of-state employers with employees residing in Massachusetts.

11. The new contract has two fee schedules – one for Premier patients and one for PPO patients. Is [DMIC] planning on eliminating the Premier product?

No, we do not plan on eliminating the Premier product. Delta Dental of Massachusetts, in addition to other Delta Dentals with membership in Massachusetts, will continue to sell Premier products based on market demand.

Ex. F at 4.

Finally, DMIC also notified insurance brokers and agents of its new PPO plan in January 2017. Ex. G. This notice expressly informed those marketplace participants that the new PPO product to be offered by DMIC, and the formation of its new network of providers to service that

product, “has no impact on existing products and networks” offered by DSM, and “does not change or impact any existing provider contracts or fee reimbursements.” Id. at 2.

By mid-January 2016, more than 4,000 dentists had entered into agreements with DMIC to provide services in its new provider network. Nevertheless, a very vocal minority of providers vehemently objected to the introduction of another PPO product featuring lower reimbursements rates, and they urged the Dental Society to oppose the formation of such a low-cost plan. Accordingly, on January 20, 2017, the Dental Society filed its Petition in this proceeding. The Society’s Petition is premised entirely on its characterization of the introduction of DMIC’s new PPO product as effecting a “transfer [of DSM’s] business and market share to its for-profit subsidiary, [DMIC].” Petition at 6. Not only does the Society fail to mention that DSM’s products continue to be offered in the marketplace in exactly the same way that they previously were offered, or that DSM has repeatedly represented that those products will remain in the marketplace for so long as customers are willing to purchase them, the Society’s Petition suggests exactly the opposite: The Society says that DSM is “moving its business, accounts, patients, and, with some coercion, providers” to DMIC, Petition at 7, and that DSM is implementing a “decision to transition its entire business to its for-profit Chapter 175 subsidiary, [DMIC].” Petition at 10.

On July 14, 2017, the Division approved DMIC’s new PPO product. Ex. H. Subsequently, DMIC has begun offering that product, called “Total Choice PPO,” in the marketplace. At the same time, in accordance with DSM’s various representations during January 2017 to its participating dentists, to the Dental Society, and to its brokers and agents, Exs. E, F, G, DSM continues to offer its own dental service plans, including the Delta Dental



Premier plan, in exactly the same way that it has offered those plans to Massachusetts customers for many years.<sup>5</sup>

## ARGUMENT

Section 12 provides, in pertinent part, that “[a]ny dispute or controversy arising between a dental service corporation and any participating dentist” may be submitted to a board constituted under the statute. G.L. c. 176E, § 12 (emphasis added). It goes on to provide that a proceeding brought before a Section 12 review board “shall be conducted as an adjudicatory proceeding in accordance with the provisions of section eleven of chapter thirty A.” *Id.* Under the rules applicable to such proceedings, “The Presiding Officer may at any time, on [her] own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, [or] for failure of the Petitioner to state a claim upon which relief can be granted . . .” 801 C.M.R. § 1.01(7)(g)(3). For the reasons set forth below, the Dental Society’s petition fails to state a claim over which the Review Board has jurisdiction, or upon which relief can be granted to the Society.

### I. The Dental Society’s Petition Fails To Allege a Justiciable Claim.

An adjudicatory proceeding within the meaning of Chapter 30A is one “in which the legal rights, duties or privileges of specifically named persons” are determined. G.L. c. 30A, § 1. Such a proceeding requires the determination of the “substantive legal rights” of the parties. *Collective Bargaining Reform Ass’n v. Labor Relations Comm’n*, 436 Mass. 197, 203 n.8 (2002). *See also Forsyth Sch. for Dental Hygienists v. Bd. of Registration in Dentistry*, 404 Mass. 211, 216-17 (1989) (adjudicatory proceeding requires that petitioner “advance . . . putative ‘rights, duties or privileges.’”); *San Juan Cable LLC v. Puerto Rico Tel. Co., Inc.*, 612 F.3d 25, 33 n.3

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<sup>5</sup> In fact, since July 1, 2017, 299 existing customers of DSM dental insurance plans renewed their contracts with DSM, and another 40 new customers signed contracts with DSM.

(1st Cir. 2010) (“Adjudication is party-specific and ‘concerned with the determination of past and present rights and liabilities.’”) (*quoting Bowen v. Georgetown U. Hosp.*, 488 U.S. 204, 219 (1988)). To that end, the rules that govern such proceedings require that they be commenced by the filing of a Notice of Claim that states concisely the relief sought by the petitioner and the facts upon which the petitioner’s claim of entitlement to that relief is based. 801 C.M.R. § 1.01(6)(c). They invest the presiding officer with authority to dismiss petitions that “fail to state a claim upon which relief can be granted,” *id.* § 1.01(7)(g)(3), and they subject both “claims” and “defenses” to summary decision in the absence of any “genuine issue of fact related to” either. *Id.* § 1.01(7)(h). As these statutory and regulatory provisions make plain, the only proper subject of a Section 12 adjudicatory proceeding is a justiciable claim alleged by a petitioner based on allegations that his or her rights have been infringed by the respondent.

The Dental Society has alleged no such justiciable claim in this case. Its petition does not allege that DSM is doing or has done anything that violates any substantive rights of its members arising either under Chapter 176E, under any other statute, or under common law. In particular, the Society does not allege that anything that DSM is doing or has done violates any rights of its members under any of their contracts with DSM. This omission was not inadvertent. The simple fact of the matter is that, notwithstanding the Society’s conclusory allegation that DSM is “transitioning” its business to DMIC, *there have in fact been no changes with respect to the products that DSM offers, with respect to its contracts with participating dentists, or with respect to its dealings with its customers and subscribers.* Given that reality, it would have been *impossible* for the Society to have alleged that the legally enforceable rights of its members had been abridged in any way. And, in fact, that is exactly what the Society told its members before filing its Petition.

On January 12, 2017, the Dental Society hosted a Webinar for its members entitled “Understanding Delta Dental of Massachusetts Transitions.” Ex. I. This Webinar featured presentations by the Society’s outside counsel from the firm of Goulston & Storrs – the same lawyers who filed the Society’s Petition in this proceeding. At this Webinar, these lawyers answered certain questions posed by Society members who had received the proposed contract from DMIC in connection with its formation of a new service network for its PPO product. Ex. I at 20:10 – 23:21. The Society’s lawyers identified the first of these questions as, “what happens if we sign the [DMIC<sup>6</sup>] contract.” Id. at 20:14-15. In response, the Society’s counsel explained that

[i]f you sign the [DMIC] contract you will be bound by its terms, including the ones I have just described. You will participate in the new combined PPO Premier network, and you will be obligated to accept patients who are enrolled in the new PPO Premier network. *You will also continue to participate in the [DSM] contract and the [DSM] Premier network. That is, signing the [DMIC] contract does not terminate or displace your existing contract with [DSM]. So long as there are Premier-only patients, you may continue to see those patients, and you will continue to be compensated pursuant to the [DSM] contract.*

Id. at 20:15 – 21:6 (emphasis added). Counsel then addressed the related question of, “What happens if we don’t sign the [DMIC] contract.” Id. at 22:2-3. Counsel explained that, in that scenario,

[y]ou will not be bound by [the DMIC contract’s] terms and you will not participate in the new PPO Premier network. *You will continue to practice in the [DSM] Premier-only network, and your contract with [DSM] will remain in force so long as neither side terminates that contract.*

Id. at 22:3-9 (emphasis added).

Finally, the Society’s counsel informed members that the Society had considered a number of options in response to the introduction of DMIC’s new PPO product,

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<sup>6</sup> Throughout the Webinar, the Society’s lawyers referred to DSM as “New Delta,” and to DMIC as “Old Delta.” Ex. I at 5:7 – 6:10.

including the initiation of “court action.” Id. at 31:3-4. Counsel explained the Society rejected that option because “*so far we have not identified any breaches of any contractual obligations that apply to Delta.*” Id. at 31:4-6 (emphasis added). Counsel distinguished this situation from a California case of which many members were aware that involved claims that had been brought against a dental insurer:

Now, some of you may be familiar with litigation that’s occurred in California involving California Delta. That litigation involves what we think of as pretty clear breaches by Delta of their obligations under their contract. *That situation is not the situation in Massachusetts.* So we do not think that provides any helpful precedent for the situation in Massachusetts.

Id. at 31:8-16 (emphasis added).

As the Society itself thus made abundantly clear to its members immediately before filing its Petition, it has not alleged any justiciable claim against DSM in this proceeding *because its members have no justiciable claim to allege.* Having failed to contend that the legally cognizable rights of its members have been violated in any way – because they haven’t – the Society’s Petition does not seek any form of relief directed toward the redress of such violations. The Society instead requests that the Review Board hold a hearing at which the Division will somehow provide “confirmation” that it has approved *DMIC’s* new PPO product; that “as part of the hearing” the Society be given a copy of the new *DMIC* product; and that regardless of the approval of the new product by the Division that has already occurred through its ordinary channels of review, this Review Board independently “review” certain aspects of *DMIC’s* new PPO product and the way in which *DMIC* developed its network to service the product. Petition at 9-10. At bottom, as the Society expressly states, what its Petition actually seeks is a “full vetting” of all decisions made in connection with the development of *DMIC’s* new PPO product. Id. at 10. Apparently, the Society believes that its request for such relief “qualifies as . . . a

dispute or controversy” within the meaning of Section 12, Petition at 2, n. 1, simply because DSM opposes it.

The Society construes Section 12’s reference to a “dispute or controversy” in an unsupportable and impossibly broad sense, as extending not only to justiciable claims – i.e., disputes or controversies arising from alleged abridgements of a petitioner’s legally enforceable rights created by statute or common law – but to *anything* as to which parties disagree. This construction of the statute is flatly contradicted by its requirement that any proceeding brought pursuant to its terms “shall be conducted as an adjudicatory proceeding.” Generalized allegations directed toward obtaining comprehensive regulatory review of actions undertaken by a participant in a regulated industry are not the proper subjects of adjudicatory proceedings – at least in the absence of specific allegations that the legally enforceable rights of the petitioner have thereby been abridged in some way. And in this case, the Society simply does not raise a claim for any alleged violations of its legal rights (or those of its members), nor seek any relief directed toward obtaining redress for such alleged violations.

In sum, the Dental Society’s petition fails “to state a claim upon which relief can be granted,” because, as a threshold matter, the petition does not even attempt to allege a justiciable claim either on behalf of the Society itself or on behalf of its members. For this initial reason, this Review Board is without jurisdiction to adjudicate whatever abstract “claim” the Society’s petition attempts to allege.

## II. The Review Board Has No Statutory Authority To Grant The Relief Sought By The Dental Society.

As noted above, the Petition filed by the Dental Society seeks a broad-ranging “full vetting” of the development of *DMIC’s* new PPO product. Petition at 10. The “full vetting” that the Society seeks explicitly extends to a “review” of various aspects of *DMIC’s* PPO product,

and the way in which *DMIC* markets that product. *Id.* (referring to DMIC as “New Delta”). But a review board constituted under Section 12 is without statutory authority to review the business activities or products of DMIC, for the self-evident reason that *DMIC is not a dental service corporation that is subject to chapter 176E*. It is a for-profit insurer that is subject to chapter 175. This Review Board therefore has no statutory authority to grant the relief sought by the Dental Society’s Petition.<sup>7</sup> For this additional reason, the Board is without jurisdiction over the Petition.

### III. The Dental Society Has No Standing To Allege A Claim Under Section 12.

It is basic that “the starting point for a standing determination for a litigant before an administrative agency is . . . the statute that confers standing before that agency.” *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999). This rule embodies the black-letter principle of administrative law that “an agency has no inherent authority beyond its enabling act and therefore it may do nothing that contradicts such legislation.” *ENGIE Gas & LNG LLC v. Dept. of Pub. Utilities*, 475 Mass. 191, 205 (2016) (quoting *Globe Newspaper Co. v. Beacon Hill Architectural Comm'n*, 421 Mass. 570, 586 (1996)). The application of these basic principles compels the conclusion that this Review Board does not have jurisdiction over the Society’s Petition for the further reason that, under the Board’s enabling statute, the Society has no standing to assert a claim that is subject to adjudication by this Board.

Section 12 applies only to controversies “between a dental service corporation and any participating dentist.” G.L. c. 176E, § 12. The statute defines a “participating dentist” as “a

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<sup>7</sup>The Review Board is also without statutory authority to grant the relief sought by the Petition even if that relief were directed to a review of the business of DSM, to the extent that a large part of DSM’s business consists of customers who use DSM to administer self-insured ERISA plans. Under ERISA, state oversight of the administration of such plans is preempted. 29 U.S.C. § 1144. Thus, even if the Review Board were somehow to find that it has authority to act with respect to Chapter 175 insurance plans, DMIC would still offer the PPO product to self-insured customers. Notably, over half of DSM’s business is self-insured.

registered dentist who agrees in writing with a dental service corporation to perform dental service for subscribers and covered dependents and to abide by the by-laws, rules and regulations of such corporation.” *Id.* § 1. Obviously, the Dental Society is not a participating dentist within the meaning of the statute. Instead, it is a trade association that includes members who are participating dentists. While the statute could easily have been drafted to give the Society the right to bring a petition under Section 12,<sup>8</sup> it was not.

“[S]tatutes must be interpreted as enacted and statutory omissions cannot be supplied by the court.” *Modern Continental Constr. Co. v. City of Lowell*, 391 Mass. 829, 839-40 (1984). As Section 12 itself makes plain, a review board’s jurisdiction under the statute is limited to disputes or controversies between dental service corporations and *participating dentists*. Consequently, even if the Society’s Petition alleged a “dispute or controversy” within the meaning of the statute (which it does not), the Society is without standing to seek the adjudication of any such dispute or controversy. For this additional reason, the Review Board does not have jurisdiction in this proceeding.

#### IV. The Dental Society’s Petition Is Not Timely.

Even if it were to be assumed, for sake of argument, that the Dental Society’s petition alleges a justiciable claim, that the Review Board has the statutory authority to grant the relief that the Society seeks upon that claim, and that the Dental Society has standing to assert such a claim, the Dental Society’s Petition still fails to state a claim upon which relief can be granted. The Petition, and whatever claim it attempts to allege, is premised entirely upon its

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<sup>8</sup> In fact, when Chapter 176E was originally enacted in 1962, the General Court specifically gave the Dental Society the right to approve a majority of the members of DSM’s board of directors. St. 1962, c. 714, § 3. Although this right was thereafter eliminated by a subsequent amendment to the statute, St. 1981, c. 347, its inclusion in the statute as originally drafted and enacted shows that the legislature specifically considered which rights to grant to the Society under the terms of the statute. In view of this legislative history, the General Court’s failure to grant the Society any right to represent its members in Section 12 review board proceedings strongly suggests that the legislature specifically intended that the Society would not have that right.

characterization of the effect of DMIC's PPO product as resulting in a "transfer" of DSM's "business and market share" to DMIC. Petition at 6. In support of this characterization, the Society relies entirely upon certain statements in the initial notification to participating dentists of DMIC's intent to offer a PPO product. That notification occurred on November 21, 2016. Chapter 176E provides that a petition under Section 12 must be filed "within thirty days after [the] dispute or controversy arises." G.L. c. 176E, § 12. Consequently, even if it were assumed, as the Society contends, that the subject of its petition is a "dispute or controversy" within the meaning of the statute, that dispute or controversy arose no later than November 21, 2016.<sup>9</sup> Since the Society did not file its petition in this proceeding until January 20, 2017, that petition is untimely and relief could not be granted upon any claim alleged therein. For this additional and alternative reason, the Society's petition should be dismissed under § 1.01(7)(g)(3).

### CONCLUSION

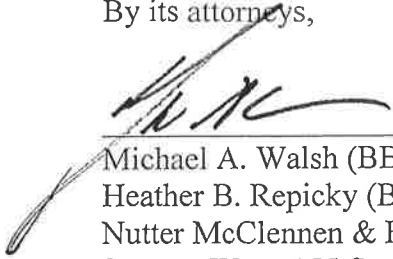
For the reasons set forth above, Delta respectfully submits that the Board should dismiss the Dental Society's "Petition for Hearing on Delta Dental's Overhaul of the Statutory and Contractual Setting in which It Proposes To Do Business with Massachusetts Dentists" under 801 C.M.R. § 1.01(7)(g)(3).

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<sup>9</sup> To the extent that the gravamen of the Society's complaint is that DSM will be selling a dental insurance product through its subsidiary, DMIC, its claim arose no later than January 1, 2015, when DMIC first issued policies for such dental insurance products after offering them on the Massachusetts Connector during the fourth quarter of 2014.



By its attorneys,



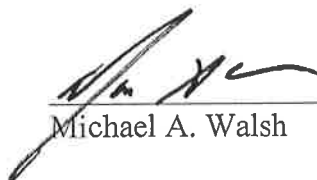
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Dated: September 15, 2017

## CERTIFICATE OF SERVICE

I certify that the foregoing Respondent's Pre-Hearing Memorandum was served on counsel for petitioner, Massachusetts Dental Society, on September 15, 2017 by in hand delivery addressed to its counsel of record in this proceeding, Jack A. Eiferman, Esq., Goulston & Storrs P.C., 400 Atlantic Ave., Boston, MA 02110-3333.



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Michael A. Walsh

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