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BY HAND DELIVERY

Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118-6200
Attn: Hearing and Appeals

Re: Petition of Massachusetts Dental Society Pursuant to M.G.L. c. 176E

Dear Sir or Madam:

On January 20, 2017, the Massachusetts Dental Society (“Dental Society”) requested a hearing with the Division of Insurance pursuant to Chapter 176E to examine the transition of business from the Commonwealth’s sole nonprofit dental service corporation, Dental Services of Massachusetts, Inc. (“Old Delta”), to its for-profit subsidiary, DSM Massachusetts Insurance Company, Inc. (“New Delta”). The Dental Society last corresponded with the Division about its request by letter dated February 3, 2017. Delta last corresponded with the Division about this request by letter dated February 20, 2017. Events since this correspondence have only reinforced the need for a hearing on this unprecedented transition and the Dental Society respectfully restates its request.

First, by Delta’s count, more than 80% of dentists enrolled in Old Delta’s Premier network have enrolled in New Delta’s combined PPO and Premier network as of May 1, 2017. Delta has launched this new network by conscripting dentists who voluntarily participated in Old Delta’s Premier plans into its new combined plan. It did so under the threat of losing their current Premier patients if and when these patients are moved to the combined network. The use of a Chapter 176E nonprofit dental service plan, nurtured for decades under favorable exemptions and immunities, to prime the launch of a for-profit network deserves Division attention.

Second, the Society understands that those dentists who did not sign up with New Delta by the February 2017 deadline have been locked out of the new network, threatening patient/provider relationships formed through Chapter 176E plans. Chapter 176E’s “every registered dentist” guarantee prohibits these exclusionary tactics.

Third, Delta has claimed to amend the New Delta provider agreements by striking a provision that would have forced dentists to refer care to in-network specialists. This was a particularly egregious intrusion on the patient/provider relationship the integrity of which Chapter 176E, § 7 expressly protects. Nevertheless, the Dental Society has yet to see the precise language by which the provider agreement has purportedly been amended by New Delta. While the Dental Society applauds the removal of this provision, it came only after the Dental Society requested Division review of this provision. This development reveals the benefit of scrutiny and the risk of indifference to Delta's push to exploit what it perceives to be a more hospitable regulatory environment.

Fourth, Delta's transition has spurred review by other branches and offices of government. House Bill Number 2197 ("An Act Concerning Dental Service Corporations") has been filed in the General Court. The Attorney General has initiated review of the public charity implications of the actions of Old Delta. Following the lead of the Dental Society, a separate group of dentists recently requested review of Delta's actions by the Attorney General's Health Care and Fair Competition Bureau and the Non-Profit Organizations/Public Charity Division. The Division has an important role to play in the Commonwealth's review of the transfer of assets, patients, and providers from a Chapter 176E entity to a for-profit one.

Finally, Minuteman Health Inc. announced last week a similar plan to abandon its nonprofit structure so that it can sell health plans under a new for-profit entity. It has cited the regulatory relief afforded by for-profits as one reason for the transition. This echoes the arguments made by Delta in its January 27, 2017 and February 10, 2017 letters to the Division, in which Delta characterizes the regulatory environment of Chapter 176E as "hampering" its ability to offer products on an "even playing field." But Old Delta already occupies a field steeply tilted in its favor by virtue of a half century of growing its business as a tax-exempt company. The novel and inevitably precedential question posed by Delta's transition is whether a regulated entity can self-deregulate on a whim and leverage its non-profit assets – trademarks, goodwill, provider relations, etc. – to jumpstart a for-profit alter ego.

The Boston Globe recently reported that in 2015, the last year for which tax filings are available, eight Delta executives earned more than \$1 million in total compensation. While Delta justifies its recent activities as an effort to control the costs of dental care, Delta's move to for-profit status to take advantage of a more permissive regulatory setting threatens the quality of dental care across the Commonwealth. This is a unique transition. It presents unique and far-reaching consequences. They deserve the careful scrutiny of this Division.

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Sincerely,

Derek B. Domian

cc: David Abelman, Esq.
Jack A. Eiferman, Esq.