

- Perpetuate a regulatory environment that denies healthcare to children who are entitled to it;
- Interact discourteously with individuals giving testimony, instead of listening respectfully and attempting to arrive at a fair decision.

Mass. R. Prof. Cond. 3.1 says: “A lawyer shall not bring, continue, or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous....” The comment to the rule adds: “What is required of lawyers ... is that they inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith arguments in support of their clients’ positions.”

Mass. R. Prof. Cond. 4.1 says: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client....”

It is inconsistent with those rules to:

- State that the reimbursement regime has not changed, when he knows that is not true;
- Argue that an agency can enact a rate change without complying with state law, unless the agency chooses to define it as a rate change;
- State falsely that a rate change is a clarification.

#### **4. Conclusion.**

The MassHealth regulations for orthodontists have changed three times in the past year in ways that are extremely confusing. These changes make it impossible for providers to serve the poorest children in the Commonwealth. Kids get hurt while Attorney Leino smirks and doodles and rolls his eyes.

Ironically, the providers and MassHealth are not far apart. The providers are only asking to return to the regulatory environment that existed ten months ago. This apparently worked for the agency and, although providers have long deserved a rate increase, they were willing to provide services under the old rate structure. Kids were getting care. The agency frankly acknowledges that it is not saving any money. If there was any reason to throw the system into turmoil, the agency can’t explain what it was.