

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROGER K. LEIR, D.P.M.

Doctor of Podiatric Medicine License No. E-1171,

Respondent.

No. 1B-94-35623

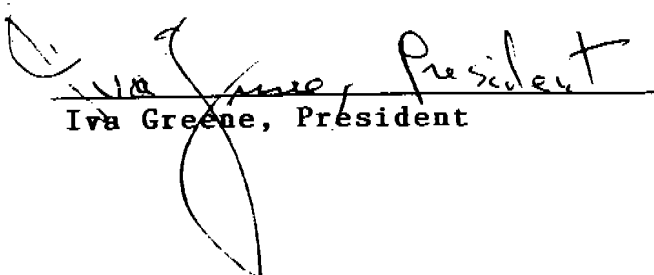
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Board of Podiatric Medicine, State of California.

This Decision shall become effective on April 23, 1999 at 5:00 p.m.

Order Dated March 24, 1999

BOARD OF PODIATRIC MEDICINE


Iva Greene, President

BILL LOCKYER, Attorney General
of the State of California
ROBERT McKIM BELL (State Bar No. 56332)
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 5212
Los Angeles, California 90013-1233
Telephone: (213) 897-2556

Attorneys for Complainant

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No. 1B-94-35623
	)	
ROGER K. LEIR, D.P.M.	)	
253 Lombard Street, Suite B	)	STIPULATED SETTLEMENT
Thousand Oaks, California 91360	)	AND
	)	DISCIPLINARY ORDER
Doctor of Podiatric Medicine License No.	)	
E-1171,	)	
	)	
Respondent.	)	

IT IS HEREBY STIPULATED AND AGREED by and between the parties
to the above-entitled proceedings that the following matters are true:

1. An Accusation in case number 1B-94-35623 was filed with the
Board of Podiatric Medicine (the "Board") on July 30, 1998, and is currently
pending against Roger K. Leir, D.P.M. (the "respondent").

2. The Accusation, together with all statutorily required
documents, was duly served on the respondent on or about July 30, 1998, and
respondent filed his Notice of Defense contesting the Accusation on or about
August 14, 1998. A copy of Accusation No. 1B-94-35623 is attached as Exhibit
"A" and hereby incorporated by reference as if fully set forth.

1 3. Complainant, James Rathlesberger, is the Executive Officer of the
2 Board of Podiatric Medicine and brought this action solely in his official capacity.
3 The Complainant is represented by the Attorney General of California, Bill Lockyer,
4 by and through Deputy Attorney General Robert McKim Bell.

5 4. At all times relevant herein, respondent has been licensed by
6 the Board of Podiatric Medicine under Doctor of Podiatric Medicine License No.
7 E-1171.

8 5. Respondent is represented by Gerald Lewis Price, whose
9 address is 2161 Argyle Avenue, Hollywood, California 90068-2901.

10 6. Respondent and his attorney have fully read and discussed the
11 charges contained in Accusation Number 1B-94-35623. Respondent has been fully
12 advised regarding his legal rights and the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 7. Respondent understands the nature of the charges alleged in
15 the Accusation and that, if proven at hearing, the charges and allegations would
16 constitute cause for imposing discipline upon his Doctor of Podiatric Medicine
17 License. Respondent is fully aware of his right to a hearing on the charges
18 contained in the Accusation, his right to confront and cross-examine witnesses
19 against him, his right to the use of subpoenas to compel the attendance of
20 witnesses and the production of documents in both defense and mitigation of the
21 charges, his right to reconsideration, court review and any and all other rights
22 accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent knowingly, voluntarily and irrevocably waives and
24 gives up each of these rights.

25 9. Respondent admits that in his treatment of a single male patient
26 in 1990 he committed repeated negligent acts and has thereby subjected his
27 license to disciplinary action under section 2234 of the Code. Respondent agrees

1 to be bound by the Board's Disciplinary Order as set forth below.

2 10. The admissions made by respondent herein are for the purpose
3 of this proceeding and any other proceedings in which the Board of Podiatric
4 Medicine, or other professional licensing agency is involved, and shall not be
5 admissible in any other criminal or civil proceedings.

6 11. Based on the foregoing admissions and stipulated matters, the
7 parties agree that the Board shall, without further notice or formal proceeding,
8 issue and enter the following order:

9
10 DISCIPLINARY ORDER

11 **IT IS HEREBY ORDERED** that Doctor of Podiatric Medicine License
12 number E-1171 issued to Roger K. Leir, D.P.M. is revoked. However, the
13 revocation is stayed and respondent is placed on probation for three years on the
14 following terms and conditions.

15 1. PACE PROGRAM Within 90 days from the effective date of
16 this decision, respondent, at his expense, shall enroll in The Physician Assessment
17 and Clinical Education Program at the University of California, San Diego School of
18 Medicine (hereinafter, the "PACE Program") and shall undergo assessment, clinical
19 training and examination. First, the respondent shall undergo the comprehensive
20 assessment program including the measurement of medical skills and knowledge,
21 the appraisal of physical health and psychological testing. After assessment, the
22 PACE Evaluation Committee will review all results and make a recommendation to
23 the Board or its designee, the respondent and other authorized personnel as to
24 what clinical training is required, including scope and length, treatment of any
25 medical or psychological condition, and any other factors affecting the
26 respondent's practice of podiatry. The respondent shall undertake whatever
27 clinical training and treatment of any medical or psychological condition as may be

recommended by the PACE Program. Finally, at the completion of the PACE Program, respondent shall submit to an examination of its contents and substance. The examination shall be designed and administered by the PACE faculty. Respondent shall not be deemed to have successfully completed the program unless he passes the examination. Respondent agrees that the determination of the PACE Program faculty as to whether or not he has passed the examination and/or successfully completed the PACE Program shall be binding.

Respondent shall complete the PACE Program no later than six months after his initial enrollment unless the BPM or its designee agrees in writing to a later time for completion.

If respondent successfully completes the PACE Program, including the examination referenced above, he agrees to cause the PACE representatives to forward a Certification of Successful Completion of the program to BPM or its designee.

If respondent fails to successfully complete the PACE Program within the time limits outlined above, he shall be suspended from the practice of podiatry.

Failure to participate in, and successfully complete all phases of the PACE Program, as outlined above, shall constitute a violation of probation.

2. INFECTIOUS DISEASE COURSEWORK Within 90 days of the effective date of this decision, respondent shall submit to the BPM or its designee, for its prior approval, a course or courses in the management of infectious diseases. The exact number of hours and the specific content of the program shall be determined by the BPM or its designee and will be in addition to the Continuing Medical Education requirements for relicensure. Respondent shall successfully complete the coursework within the first year of probation.

3. PROBATION COSTS Respondent shall pay the administrative costs incurred by the BPM associated with probation monitoring each and every

1 year of probation. These costs are \$80/hour but shall not exceed \$1,500/year.
2 Such costs shall be payable to the BPM at the end of each fiscal year. Respondent
3 will be provided with an invoice at the close of each fiscal year which must be paid
4 within 30 days of receipt. The final invoice will be provided upon termination of
5 probation and is also due and payable within 30 days of receipt. Failure to pay
6 such costs shall be considered a violation of probation.

7 4. RECOVERY OF INVESTIGATION & PROSECUTION COSTS The
8 respondent is hereby ordered to reimburse the BPM the amount of \$4,000 for the
9 recovery of the actual and reasonable costs of the investigation and prosecution of
10 this matter as provided for in Section 2497.5 of the Business and Professions
11 Code. Repayment of these costs are payable over three years in annual
12 installments of not less than \$1,000. Failure to reimburse the BPM's cost of its
13 investigation and prosecution shall constitute a violation of the probation order,
14 unless the BPM agrees in writing to payment by a different installment plan
15 because of financial hardship.

16 5. OBEY ALL LAWS Respondent shall obey all federal, state and
17 local laws, and all rules governing the practice of podiatric medicine in California.

18 6. QUARTERLY REPORTS Respondent shall submit quarterly
19 declarations, under penalty of perjury, on forms provided by the BPM, stating
20 whether there has been compliance with all the conditions of probation.

21 Notwithstanding any provision for tolling of requirements of probation,
22 during the cessation of practice respondent shall continue to submit quarterly
23 declarations under penalty of perjury.

24 7. SURVEILLANCE PROGRAM Respondent shall comply with the
25 BPM's probation surveillance program.

26 8. INTERVIEW WITH PODIATRIC MEDICAL CONSULTANT
27 Respondent shall appear in person for interviews with the BPM's medical

1 consultant, upon request, at various intervals and with reasonable notice.

2 9. TOLLING FOR CESSATION OF PRACTICE In the event the
3 respondent fails to satisfactorily complete any provision of the order of probation,
4 which results in the cessation of practice, all other provisions of probation other
5 than the submission of quarterly reports shall be held in abeyance until respondent
6 is permitted to resume the practice of podiatry. All provisions of probation shall
7 recommence on the effective date of resumption of practice. Periods of cessation
8 of practice will not apply to the reduction of the probationary period.

9 10. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In
10 the event respondent should leave California to reside or to practice outside the
11 state, respondent must notify the BPM in writing of the dates of departure and
12 return. Periods of residency or practice outside California will not apply to the
13 reduction of this probationary period.

14 11. COMPLETION OF PROBATION Upon successful completion of
15 probation, respondent's certificate will be fully restored.

16 12. VIOLATION OF PROBATION If respondent violates probation in
17 any respect, the BPM, after giving respondent notice and the opportunity to be
18 heard, may revoke probation and carry out the disciplinary order that was stayed.
19 If an accusation or petition to revoke probation is filed against respondent during
20 probation, the BPM shall have continuing jurisdiction until the matter is final, the
21 period of probation shall be extended until the matter is final, and no petition for
22 modification of penalty shall be considered while there is an accusation or petition
23 to revoke probation pending against respondent.

24 13. COMPLIANCE WITH REQUIRED CONTINUING MEDICAL
25 EDUCATION Respondent shall submit satisfactory proof biennially to the BPM of
26 compliance with the requirement to complete fifty (50) hours of approved
27 continuing medical education for re-licensure during each two (2) year renewal

1 period.

2
3 CONTINGENCY

4 This stipulation shall be subject to the approval of the Board of
5 Podiatric Medicine. Respondent understands and agrees that Board staff and
6 counsel for complainant may communicate directly with the Board regarding this
7 stipulation and settlement, without notice to or participation by respondent or his
8 counsel. If the Board fails to adopt this stipulation as its Order, the stipulation shall
9 be of no force or effect, it shall be inadmissible in any legal action between the
10 parties, and the Board shall not be disqualified from further action in this matter by
11 virtue of its consideration of this stipulation.

12
13 ACCEPTANCE

14 I have read the above Stipulated Settlement and Disciplinary Order. I
15 have fully discussed the terms and conditions and other matters contained therein
16 with my attorney, Gerald Lewis Price. I understand the effect this Stipulated
17 Settlement and Disciplinary Order will have on my Doctor of Podiatric Medicine
18 License, and agree to be bound thereby. I enter this stipulation freely, knowingly,
19 intelligently and voluntarily.

20 DATED: 2-16-99

21
22 
23 ROGER K. LEIR, D.P.M.
24 Respondent

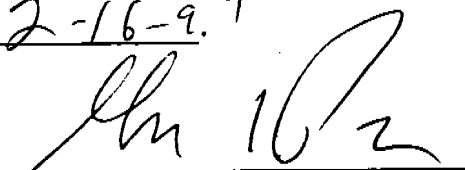
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27 //

1 I have read and fully discussed the terms and conditions and other
2 matters contained in the above Stipulated Settlement and Disciplinary Order with
3 respondent Roger K. Leir, D.P.M., and approve of its form and content.

4 DATED: 2-16-97

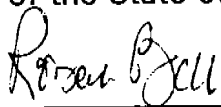
5 
6 Gerald Lewis Price
7 Attorney for Respondent

8
9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby
11 respectfully submitted for the consideration of the Board of Podiatric Medicine.

12 DATED: 2/23/99

13 BILL LOCKYER, Attorney General
14 of the State of California

15 

16 ROBERT McKIM BELL
17 Deputy Attorney General

18 Attorneys for Complainant
19
20

21 Exhibit: Accusation

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24
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27

EXHIBIT A

Accusation No. 1B-94-35623

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ROBERT McKIM BELL, (State Bar No. 56332)
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 5212
4 Los Angeles, California 90013-1233
Telephone: (213) 897-2556

5 Attorneys for Complainant
6
7

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 30 1998
BY Hattie Johnson ANALYST

8 BEFORE THE
9 BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 1B-94-35623
Against:)

12 ROGER K. LEIR, D.P.M.)
13 253 Lombard St., Ste. B)
Thousand Oaks, Ca. 91360)

14 Doctor of Podiatric Medicine License)
15 No. E-1171,)

16 Respondent.)
17

ACCUSATION

18 The Complainant alleges:

19 PARTIES

20 1. James Rathlesberger ("Complainant") brings this
21 accusation solely in his official capacity as the Executive Officer
22 of the Board of Podiatric Medicine, Department of Consumer Affairs,
23 State of California (hereinafter the "Board").

24 2. On or about September 3, 1964, Doctor of Podiatric
25 License No. E-1171 was issued by the Board to ROGER K. LEIR, D.P.M.
26 (hereinafter "respondent"). At all times relevant to the charges
27 brought herein, this license has been in full force and effect.

1 Unless renewed, it will expire on March 31, 2000.

2 **JURISDICTION**

3 3. This accusation is brought before the Board under
4 the authority of the following sections of the Business and
5 Professions Code (hereinafter "Code"):

6 A. Section 2497 of the Code provides:

7 "(a) The board may order the denial of an
8 application for, or the suspension of, or the revocation
9 of, or the imposition of probationary conditions upon, a
10 certificate to practice podiatric medicine for any of the
11 causes set forth in Article 12 (commencing with Section
12 2220) in accordance with Section 2222.

13 "(b) The board may hear all matters, including
14 but not limited to, any contested case or may assign any
15 such matters to an administrative law judge. The
16 proceedings shall be held in accordance with Section
17 2230. If a contested case is heard by the board itself,
18 the administrative law judge who presided at the hearing
19 shall be present during the board's consideration of the
20 case and shall assist and advise the board.

21 B. Section 2222 of the Code provides that the
22 Board may order the revocation, suspension, or other
23 restriction of any podiatrist's certificate.

24 C. Section 2234 of the Code provides that
25 unprofessional includes, but is not limited to, the following:

26 "(a) Violating or attempting to violate,
27 directly or indirectly, or assisting in or abetting the

1 violation of, or conspiring to violate, any provision of
2 this chapter.

3 "(b) Gross negligence.

4 "(c) Repeated negligent acts.

5 "(d) Incompetence.

6 "(e) The commission of any act involving
7 dishonesty or corruption which is substantially related
8 to the qualifications, functions, or duties of a
9 physician and surgeon.

10 "(f) Any action or conduct which would have
11 warranted the denial of a certificate."

12 D. Section 2497.5 of the Code provides, in part:

13 "(a) The board may request the administrative
14 law judge, under his or her proposed decision in
15 resolution of a disciplinary proceeding before the board,
16 to direct any licensee found guilty of unprofessional
17 conduct to pay to the board a sum not to exceed the
18 actual and reasonable costs of the investigation and
19 prosecution of the case."

20 E. Section 125.3 of the Code provides that in any
21 order issued in resolution of a disciplinary proceeding before
22 any board within the Department of Consumer Affairs, the board
23 may request the administrative law judge to direct a licensee
24 found to have committed a violation or violations of the
25 licensing act to pay not only the costs of the investigation
26 and enforcement but also the Attorney General costs of the
27 case.

1 4. Section 16.01 of the 1997/1998 Budget Act of the
2 State of California in pertinent part provides:

3 "(a) No funds appropriated by this act may be
4 expended to pay any Medi-Cal claim for any service
5 performed by a physician while that physician's license
6 is under suspension or revocation due to a disciplinary
7 action of the Medical Board of California.

8 "(b) No funds appropriated by this act may be
9 expended to pay any Medi-Cal claim for any surgical
10 service or other invasive procedure performed on any
11 Medi-Cal beneficiary by a physician if that physician has
12 been placed on probation due to a disciplinary action of
13 the Medical Board of California related to the
14 performance of that specific service or procedure on any
15 patient, except in any case where the board makes a
16 determination during its disciplinary process that there
17 exist compelling circumstances that warrant continued
18 Medi-Cal reimbursement during the probationary period."

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Gross Negligence--Patient M.E.^{1/})

21 5. Respondent ROGER K. LEIR, D.P.M., is subject to
22 disciplinary action under section 2234, subdivision (b), of the
23 Code in that respondent was grossly negligent in the care,
24 treatment, and management of patient M.E. The circumstances are as
25

26 1. All references to patients in this pleading shall be by
27 initials only. The true name(s) of the patient(s) are known to
respondent and will be provided to him upon a timely written
discovery request under Government Code section 11507.6.

1 follows:

2 A. On or about April 12, 1989, M.E., then 65 years
3 old, was initially evaluated by respondent. Thereafter, and
4 continuing over the course of the next several months,
5 respondent treated M.E., on a weekly basis, with hydrotherapy
6 and ultrasound.

7 B. On or about August 1, 1990, M.E. underwent
8 outpatient podiatric surgery on his left foot. The surgery
9 was performed by respondent. Following surgery, M.E. did not
10 do well.

11 C. Patient M.E. was seen by respondent on August
12 4, 1990. Among other things, M.E. complained of severe pain,
13 swelling, and redness surrounding the surgery area.
14 Respondent treated M.E. with ultrasound and continued him on
15 antibiotics. Patient M.E.'s condition did not improve.
16 Patient M.E. returned on August 8, 1990, with a reported
17 decrease in pain and increase in edema. Patient M.E. next was
18 seen by respondent on August 15, 1990, and again on August 18,
19 1990.

20 D. On or about August 21, 1990, M.E. was admitted
21 to Westlake Medical Center by Felix Negron, M.D., M.E.'s
22 primary physician. Dr. Negron's diagnosis was cellulitis
23 resulting from a staph aureus wound infection of the left
24 first and second toes which occurred following the podiatric
25 surgery performed by respondent on August 1, 1990.

26 E. M.E. received care from Drs. Negron, Khoo,
27 Statner and Harris during his hospitalization. Because M.E.'s

1 condition did not improve with conservative measures, Dr.
2 Harris performed a surgical debridement on August 25, 1990.
3 M.E.'s wounds were left open. M.E. was treated with local
4 wound care and prescribed antibiotics by Dr. Statner.
5 Following a hospitalization of nearly three weeks, M.E. was
6 discharged to his home.

7 F. On September 7 and 14, 1990, M.E. was seen by
8 Dr. Harris on an out-patient basis. M.E.'s wounds began
9 healing.

10 G. On or about September 18, 1990, however, M.E.
11 again was hospitalized. The principal diagnosis was acute
12 osteomyelitis. The secondary diagnoses included convulsions
13 and a 102 degree fever of unknown origin. Physical
14 examination upon admission showed that M.E. had swelling and
15 tenderness of the left great toe. M.E. was evaluated by Mark
16 Mazur, M.D., an infectious disease specialist. M.E.'s
17 antibiotic medication was changed and his febrile episode
18 resolved. On or about September 24, 1990, M.E. was discharged
19 from the hospital with a diagnosis of osteomyelitis.

20 H. M.E. remained under the care, treatment, and
21 management of Dr. Harris through and including January 22,
22 1993. Between August 1, 1990, the date of the surgery
23 performed by respondent, and January 22, 1993, M.E. developed
24 problems with residual arthritis in his left great toe
25 interphalangeal joint causing M.E. marked limitation of motion
26 and discomfort during weight bearing activities.

27 I. The following acts and omissions to act of

1 respondent, singularly and collectively, during the care,
2 treatment and management of patient M.E., constituted extreme
3 departures from the standard of care:

4 (1) Respondent failed to perform the
5 appropriate diagnostic tests for the detection of an acute
6 postoperative infection despite the patient's signs and
7 symptoms, following surgery, indicating same and which
8 resulted in osteomyelitis.

9 (2) Respondent failed to refer patient M.E. to
10 an outside consultant in order to have the appropriate
11 diagnostic tests performed for the detection of an acute
12 postoperative infection or to assume the care, treatment, and
13 management of a patient to whom respondent was unable to
14 render proper care and treatment.

15 (3) Respondent employed and continued to
16 employ hydrotherapy and ultrasound as treatment modalities
17 despite the signs and symptoms indicating an acute
18 postoperative infection.

19 (4) Respondent failed to diagnose an acute
20 postoperative infection that could develop into osteomyelitis.

21 SECOND CAUSE FOR DISCIPLINE

22 (Repeated Negligent Acts--Patient M.E.)

23 6. Respondent ROGER K. LEIR, D.P.M., is subject to
24 disciplinary action under section 2234 of the Code in that
25 respondent committed repeated negligent acts during the care,
26 treatment, and management of patient M.E. The circumstances are as
27 follows:

1 A. Complainant refers to and, by this reference,
2 incorporates herein the allegations set forth in paragraph 5,
3 subparagraphs A through H, inclusive, above, as though fully
4 set forth.

5 B. The following acts and omissions to act of
6 respondent, singularly and collectively, during the care,
7 treatment and management of patient M.E., constituted
8 departures from the standard of care:

9 (1) Respondent failed to perform the
10 appropriate diagnostic tests for the detection of an acute
11 postoperative infection despite the patient's signs and
12 symptoms, following surgery, indicating same and which
13 resulted in osteomyelitis.

14 (2) Respondent failed to refer patient M.E. to
15 an outside consultant in order to have the appropriate
16 diagnostic tests performed for the detection of an acute
17 postoperative infection or to assume the care, treatment, and
18 management of a patient to whom respondent was unable to
19 render proper care and treatment.

20 (3) Respondent employed and continued to
21 employ hydrotherapy and ultrasound as treatment modalities
22 despite the signs and symptoms indicating an acute
23 postoperative infection.

24 (4) Respondent failed to diagnose an acute
25 postoperative infection that could develop into osteomyelitis.

1 THIRD CAUSE FOR DISCIPLINE

2 (Incompetence)

3 7. Respondent ROGER K. LEIR, D.P.M., is subject to
4 disciplinary action under section 2234, subdivision (d), of the
5 Code for incompetence in that respondent demonstrated a lack of
6 knowledge or ability to discharge his professional medical
7 obligations during his care, treatment and management of patient
8 M.E. The circumstances are as follows:

9 A. Complainant refers to and, by this reference,
10 incorporates herein the allegations set forth in paragraph 5,
11 subparagraphs A through I, inclusive, above, as though fully
12 set forth.

1 PRAYER

2 WHEREFORE, the complainant requests that a hearing be
3 held on the matters herein alleged, and that following the hearing,
4 the Board issue a decision:

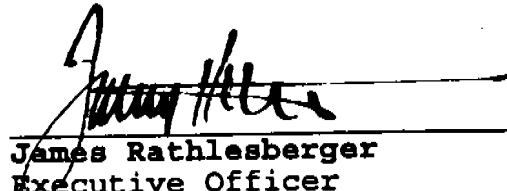
5 1. Revoking or suspending Doctor of Podiatric Medicine
6 License No. E-1171, heretofore issued to respondent ROGER K. LEIR,
7 D.P.M.;

8 2. Revoking, suspending or denying approval of
9 respondent's authority to supervise physician's assistants,
10 pursuant to section 3527 of the Code;

11 3. Ordering respondent to pay the Board the reasonable
12 costs of the investigation and enforcement of this case and, if
13 placed on probation, the costs of probation monitoring; and,

14 4. Taking such other and further action as the Board
15 deems necessary and proper.

16 DATED: July 30, 1998

17
18 
19 _____
20 James Rathlesberger
21 Executive Officer
22 Board of Podiatric Medicine
23 Department of Consumer Affairs
24 State of California

25 Complainant

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