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**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA**

11	In the Matter of the Accusation Against:)	NO. 06-94-35639
12	MELVYN ROSENSTEIN, M.D.)	OAH NO. L-9601215
13	3831 Hughes Avenue)	
14	Culver City, California 90230)	STIPULATION FOR
15	Physician's and Surgeon's Certificate No. G-28005,)	SURRENDER OF LICENSE
16	and)	
17	MELVYN S. ROSENSTEIN, M.D., dba)	
18	ROSENSTEIN MEDICAL GROUP)	
19	3831 Hughes Avenue)	
20	Culver City, California 90230)	
	Fictitious Name Permit No. 22466,)	
	Respondents.)	

21
22 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties
23 to the above-entitled proceedings, that the following matters are true:

24 1. Complainant, Ron Joseph, is the Executive Director of the Medical
25 Board of California ("Board") and is represented by Daniel E. Lungren, Attorney General of
26 the State of California by Elisa B. Wolfe and Robert McKim Bell, Deputy Attorneys
27 General.

1 2. Melvyn Rosenstein, M.D. and the Rosenstein Medical Group
2 (hereinafter, collectively, "the Respondent") are represented in this matter by attorneys James
3 R. Lahana, and Thomas P. Brown, IV. Dr. Rosenstein has consulted with his attorneys
4 concerning the effect of this stipulation which respondent has carefully read and fully
5 understands.

6 3. Respondent has received and read the Accusation which is presently on
7 file and pending in Case Number 06-94-35639 before the Board's Division of Medical
8 Quality (the "Division"), a copy of which is attached as Exhibit A and is incorporated herein
9 by reference.

10 4. Respondent understands the nature of the charges alleged in the
11 Accusation and that, if proven, they would constitute cause for disciplining his license.

12 5. Respondent and his counsel are aware of each of respondent's rights,
13 including his right to a hearing to contest the charges, his right to confront and cross-
14 examine witnesses against him, his right to testify and present evidence in his own behalf, his
15 right to the issuance of subpoenas to compel the attendance of witnesses and the production
16 of documents, and his other rights under the California Administrative Procedure Act (Gov.
17 Code, § 11500 et seq.) and other applicable laws, including the right to seek reconsideration,
18 review by the superior court, and appellate review.

19 6. In order to avoid the expense and uncertainty of a hearing, respondent
20 freely and voluntarily waives and gives up each and every one of his rights set forth above
21 and agrees that if the matter were to proceed to hearing, the complainant would be able to
22 present a *prima facie* case in support of the allegations contained in the Accusation, and that
23 the allegations, if proven, would be cause to discipline his physician's and surgeon's
24 certificate under Business and Professions Code sections 652, 2234, subdivisions (b), (c),
25 (d), and (e), 2261, 2262, 2271, 2273, and 2285. Rather than proceeding to hearing,
26 respondent hereby surrenders his physician's and surgeon's certificate for the Division's
27 formal acceptance.

1 7. It is further agreed that the Board shall withdraw the Accusation on file
2 in Board case number 06-94-35639 and dissolve the Interim Suspension Orders (ISOs) of
3 January and February, 1996, inclusive of all underlying findings of fact. Neither the ISOs
4 nor the Accusation shall be admissible in any civil or criminal proceedings. Within five days
5 of receipt of the entry of said order, pending civil litigation between the respondent and the
6 board (*Rosenstein v. Medical Board of California*, Los Angeles Superior Court Case No. BS-
7 037990) shall be dismissed with prejudice.

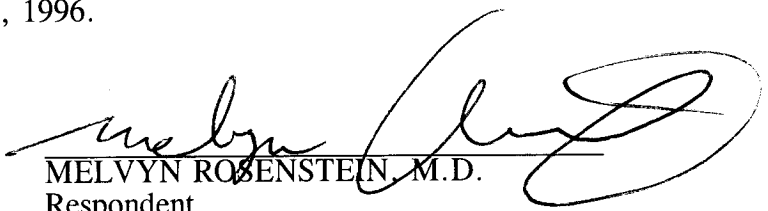
8 8. Respondent understands that by signing this stipulation he is enabling
9 the Medical Board of California to issue an order accepting the surrender of his Physician's
10 and Surgeon's Certificate without further process. He understands and agrees that Division's
11 staff and counsel for complainant may communicate directly with the Division regarding this
12 stipulation, without notice to or participation by respondent or his counsel. In the event that
13 this stipulation is rejected for any reason by the Division, it will be of no force or effect for
14 either party. The Division will not be disqualified from further action in this matter by
15 virtue of its consideration of this stipulation.

16 9. Upon acceptance of the stipulation by the Division, respondent
17 understands that he will no longer be permitted to practice as a physician in California. The
18 surrender to the Division of his license, wallet certificate and fictitious name permit, turned
19 over to the Board earlier this year, shall remain permanent as of the effective date of the
20 decision.

21 10. Respondent fully understands and agrees that if he ever files an
22 application for relicensure or reinstatement in the State of California, the Board shall treat it
23 as a petition for reinstatement, and he must comply with all the laws, regulations and
24 procedures for reinstatement of a revoked license in effect at the time the petition is filed,
25 and the factual allegations and causes for discipline contained in the Accusation will be
26 deemed admitted by respondent when the Division determines whether to grant or deny the
27 petition. This paragraph is only applicable in the event Dr. Rosenstein reapplies for

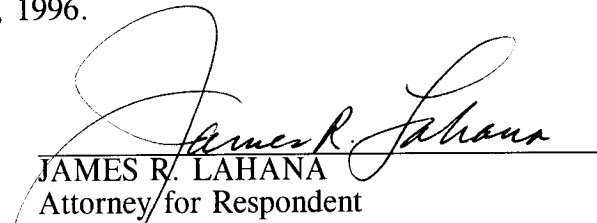
1 acceptance by the Division, I will lose all rights and privileges to practice as a physician in
2 the State of California and the surrender of my license, wallet certificate and fictitious name
3 permit shall remain permanent.

4
5 DATED: July 12, 1996.


6
7 
8 MELVYN ROSENSTEIN, M.D.
9 Respondent

10 I concur in the stipulation.

11
12 DATED: July 10, 1996.

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14 
15 JAMES R. LAHANA
16 Attorney for Respondent

17 DATED: July 12, 1996.

18
19 
20 THOMAS P. BROWN, IV
21 Attorney for Respondent

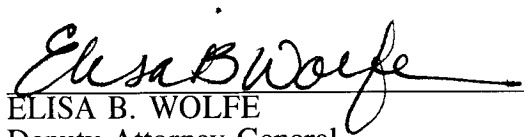
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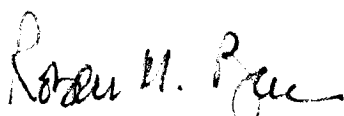
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for the consideration of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: July 15, 1996.

DANIEL E. LUNGREN, Attorney General
of the State of California


ELISA B. WOLFE
Deputy Attorney General


ROBERT MCKIM BELL
Deputy Attorney General

Attorneys for Complainant

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**DECISION AND ORDER
OF THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**

1. The surrender of Physician's and Surgeon's Certificate No. G-28005, and Fictitious Name Permit No. 22466 by respondent, Melvyn Rosenstein, M.D., is accepted by the Division of Medical Quality.

2. The interim suspension order currently in effect shall be dissolved.

3. The Accusation shall be, and is, withdrawn.

4. Within five days of the effective date of this decision, Respondent shall submit written proof to the Division of the dismissal with prejudice of civil litigation between the respondent and the board (*Rosenstein v. Medical Board of California*, Los Angeles Superior Court Case No. BS-037990).

This decision shall become effective on the 29th day of July, 1996.

It is so ordered this 29th day of July, 1996.



FOR THE DIVISION OF MEDICAL QUALITY,
MEDICAL BOARD OF CALIFORNIA
ANABEL ANDERSON-IMBERT, M.D.
CHAIR, PANEL B

Exhibit A: Accusatio

EXHIBIT "A"

(Accusation)

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ELISA B. WOLFE,
JOSEPH P. FURMAN,
3 Deputy Attorneys General
California Department of Justice
4 300 South Spring Street, Suite 5212
Los Angeles, California 90013-1204
5 Telephone: (213) 897-2555
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation) MBC Case No. 06-94-35639
Against:)
12) OAH File No. L-9601215
MELVYN ROSENSTEIN, M.D.)
13 3831 Hughes Avenue)
Culver City, California 90230)
14 Physician's and Surgeon's) **A C C U S A T I O N**
Certificate No. G-28005,)
15)
and)
16)
MELVYN S. ROSENSTEIN, M.D., dba)
17 ROSENSTEIN MEDICAL GROUP)
3831 Hughes Avenue)
18 Culver City, California 90230)
Fictitious Name Permit No. 22466,)
19)
Respondent.)
20 _____)

21
22 Ron Joseph ("Complainant"), for causes for discipline,
23 alleges:

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1 PARTIES

2 1. Complainant makes and files this accusation solely
3 in his official capacity as the Acting Executive Director of the
4 Medical Board of California ("Board").

5 2. On or about August 29, 1974, the Board issued
6 Physician's and Surgeon's Certificate No. G-28005 to Melvyn
7 Rosenstein, M.D. ("respondent"). From the date of its issuance,
8 through January 25, 1996, this certificate was in full force and
9 effect.

10 3. On or about January 6, 1995, the Board issued
11 Fictitious Name Permit No. 22466 to Melvyn Rosenstein, M.D., a
12 sole practitioner, dba Rosenstein Medical Group. Since the date
13 it was issued, through January 25, 1996, this permit was in full
14 force and effect.

15 4. On January 24, 1996, complainant filed with the
16 Division of Medical Quality ("Division") a Petition for Interim
17 Order of Suspension (Government Code § 11529) against respondent.
18 On January 26, 1996, pursuant to the parties' stipulation, which
19 was incorporated into an order by Administrative Law Judge
20 ("ALJ") Samuel D. Reyes, respondent's physician's and surgeon's
21 certificate and fictitious name permit were restricted, in that
22 said licenses were subject to specified terms and conditions. A
23 true and correct copy of said order is attached hereto as Exhibit
24 A and incorporated herein by this reference.

25 5. On February 16, 1996 (following the February 8,
26 1996 hearing on said petition), ALJ Reyes ordered respondent's
27 physician's and surgeon's certificate and fictitious name permit

1 suspended in toto pending a hearing on an accusation to be filed
2 in the matter.

3

4

JURISDICTION AND LEGAL AUTHORITY

5

6 6. This accusation is brought before the Division of
7 Medical Quality ("Division") of the Medical Board of California,
8 Department of Consumer Affairs, pursuant to the authority set
9 forth in the ensuing sections of the California Business and
10 Professions Code ("B&P").

11

12 7. B&P § 2220 requires that the Division of Medical
13 Quality of the Medical Board of California shall enforce and
14 administer the provisions of Article 12² of the Medical
15 Practice Act² as to all holders of physician's and surgeon's
16 certificates.

17

18 8. B&P § 2227 provides that the Division may revoke,
19 suspend for a period not to exceed one year, or place on
20 probation, the license of any licensee who has been found guilty
21 under the Medical Practice Act. (Also see B&P §§ 2228, 2229.)

22

23 9. B&P § 2234 states in relevant part that:

24

25 "The Division of Medical Quality shall take action
26 against any licensee who is charged with unprofessional
27 conduct. In addition to other provisions of this article,
28 unprofessional conduct includes, but is not limited to, the
29 following:

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1. Business and Professions Code sections 2220-2319.

2. Business and Professions Code section 2000 et seq.

1 "(a) Violating or attempting to violate, directly or
2 indirectly, or assisting in or abetting the violation of, or
3 conspiring to violate, any provision of this chapter.

4 "(b) Gross negligence.

5 "(c) Repeated negligent acts..

6 "(d) Incompetence.

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

10 10. B&P § 2261 states that, "Knowingly making or
11 signing any certificate or other document directly or indirectly
12 related to the practice of medicine or podiatry which falsely
13 represents the existence or nonexistence of a state of facts,
14 constitutes unprofessional conduct."

15 11. B&P § 2262 states that:

16 "Altering or modifying the medical record of any
17 person, with fraudulent intent, or creating any false
18 medical record, with fraudulent intent, constitutes
19 unprofessional conduct.

20 "In addition to any other disciplinary action, the
21 Division of Medical Quality or the California Board of
22 Podiatric Medicine may impose a civil penalty of five
23 hundred dollars (\$500) for a violation of this section."

24 12. B&P § 2271 declares that, "Any advertising in
25 violation of Section 17500, relating to false or misleading
26 advertising, constitutes unprofessional conduct."
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13. B&P § 17500 states in pertinent part that:

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor ..."

1 14. B&P § 651 declares that in relevant portion that:

2 "(a) It is unlawful for any person licensed under this
3 division ... to disseminate or cause to be disseminated, any
4 form of public communication containing a false, fraudulent,
5 misleading, or deceptive statement or claim, for the purpose
6 of or likely to induce, directly or indirectly, the
7 rendering of professional services or furnishing of products
8 in connection with the professional practice or business for
9 which he is licensed. A 'public communication' as used in
10 this section includes, but is not limited to, communication
11 by means of television, radio, motion picture, newspaper,
12 book, or list or directory of healing arts practitioners.

13 "(b) A false, fraudulent, misleading, or deceptive
14 statement or claim includes a statement or claim which does
15 any of the following:

16 "(1) Contains a misrepresentation of fact.

17 "(2) Is likely to mislead or deceive because of a
18 failure to disclose material facts.

19 "(3) Is intended or is likely to create false or
20 unjustified expectations of favorable results.

21 ...

22 "(5) Contains other representations or
23 implications that in reasonable probability will cause an
24 ordinarily prudent person to misunderstand or be deceived.

25 ...

26 "(f) Any person so licensed who violates any provision
27 of this section is guilty of a misdemeanor. A bona fide

1 mistake of fact shall be a defense to this subdivision but
2 only to this subdivision.

3 "(g) Any violation of any provision of this section by
4 a person so licensed shall constitute good cause for
5 revocation or suspension of his or her license or other
6 disciplinary action.

7 "(h) Advertising by any person so licensed may include
8 the following:

9 "(1) A statement of the name of the practitioner.

10 "(2) A statement of addresses and telephone
11 numbers of the offices maintained by the practitioner.

12 "(3) A statement of office hours regularly
13 maintained by the practitioner.

14 "(4) A statement of languages, other than English,
15 fluently spoken by the practitioner or a person in the
16 practitioner's office.

17 "(5) (A) A statement that the practitioner is
18 certified by a private or public board or agency or a
19 statement that the practitioner limits his practice to
20 specific fields....

21 "(B) A physician and surgeon licensed under
22 Chapter 5 (commencing with Section 2000) by the Medical
23 board of california may include a statement that he or she
24 limits his or her practice to specific fields, but may only
25 include a statement that he or she is certified or eligible
26 for certification by a private or public board or parent
27 association, including, but not limited to, a multidiscip-

1 linary board or association, if that board or association is
2 (i) an American Board of Medical Specialties member board,
3 (ii) a board or association with equivalent requirements
4 approved by that physician and surgeon's licensing board, or
5 (iii) a board or association with an Accreditation Council
6 for Graduate Medical Education approved postgraduate
7 training program that provides complete training in that
8 specialty or subspecialty....

9 "(6) A statement that the practitioner provides
10 services under a specified private or public insurance plan
11 or health care plan.

12 "(7) A statement of names of schools and postgrad-
13 uate clinical training programs from which the practitioner
14 has graduated, together with the degrees received.

15 "(8) A statement of publications authored by the
16 practitioner.

17 "(9) A statement of teaching positions currently
18 or formerly held by the practitioner, together with
19 pertinent dates.

20 "(10) A statement of his or her affiliations with
21 hospitals or clinics.

22 "(11) A statement of the charges or fees for
23 services or commodities offered by the practitioner.

24 "(12) A statement that the practitioner
25 regularly accepts installment payments of fees.

26 "(13) Otherwise lawful images of a practitioner,
27 his physical facilities, or of a commodity to be advertised.

1 “(14) A statement of the manufacturer, designer,
2 style, make, trade name, brand name, color, size, or type of
3 commodities advertised.

4 ...

5 “(16) A statement, or statements, providing
6 public health information encouraging preventative or
7 corrective care.

8 “(17) Any other item of factual information that
9 is not false, fraudulent, misleading or likely to
10 deceive...”

11 15. B&P § 652 states in pertinent part that,
12 “Violation of this article^{2/} in the case of a licensed person
13 constitutes unprofessional conduct and grounds for suspension or
14 revocation of his license by the board by whom he is licensed, or
15 if a license has been issued in connection with a place of
16 business then suspension or revocation of the place of business
17 in connection with which the violation occurs....”

18 16. B&P § 2273 declares that, “Except as otherwise
19 allowed by law, the employment of runners, cappers, steerers, or
20 other persons to procure patients constitutes unprofessional
21 conduct.”

22 17. B&P § 650 provides in pertinent part that, “the
23 offer, delivery... by any person licensed under this division of
24 any rebate, refund, commission, preference, patronage dividend,
25 discount, or other consideration, whether in the form of money or
26

27 3. Article 6, commencing with B&P § 650.

1 otherwise, as compensation or inducement for referring patients,
2 clients, or customers to any person, irrespective of any member-
3 ship, proprietary interest or co-ownership in or with any person
4 to whom these patients clients or customers are referred is
5 unlawful..."

6 18. B&P § 2239(a) states in pertinent part that, "The
7 use or prescribing for or administering to himself or herself, of
8 any controlled substance; or the use of any of the dangerous
9 drugs specified in Section 4211, or of alcoholic beverages, to
10 the extent, or in such a manner as to be dangerous or injurious
11 to the licensee, or to any other person or to the public, or to
12 the extent that such use impairs the ability of the licensee to
13 practice medicine safely...constitutes unprofessional conduct..."

14 19. B&P § 2280 declares that, "No licensee shall
15 practice medicine while under the influence of any narcotic drug
16 or alcohol to such extent as to impair his or her ability to
17 conduct the practice of medicine with safety to the public and
18 his or her patients. Violation of this section constitutes
19 unprofessional conduct and is a misdemeanor."

20 20. B&P § 2285 states in relevant portion that, "The
21 use of any fictitious, false, or assumed name, or any name other
22 than his or her own by a licensee either alone, in conjunction
23 with a partnership or group, or as the name of a professional
24 corporation, in any public communication, advertisement, sign, or
25 announcement of his or her practice without a fictitious-name
26 permit obtained pursuant to Section 2415 constitutes
27 unprofessional conduct..."

1 21. B&P § 2415 states in relevant portion that:

2 "(a) Any physician and surgeon ... who as a sole
3 proprietor, or in a partnership, group, or professional
4 corporation, desires to practice under any name that would
5 otherwise be a violation of Section 2285 may practice under
6 that name if the proprietor, partnership, group, or
7 corporation obtains and maintains in current status a
8 fictitious name permit issued by the Division of Licensing
9 ... under the provisions of this section.

10 "(b) The division or the board shall issue a
11 fictitious name permit authorizing the holder thereof to use
12 the name specified in the permit in connection with her,
13 her, or its practice if the division or the board finds to
14 its satisfaction that:

15 "(1) The applicant or applicants or shareholders
16 of the professional corporation hold valid and current
17 licenses as physicians and surgeons ...

18 ...

19 "(e) The division or board may revoke or suspend any
20 permit issued if it finds that the holder or holders of the
21 permit are not in compliance with the provisions of this
22 section or any regulations adopted pursuant to this section.
23 A proceeding to revoke or suspend a fictitious name permit
24 shall be conducted in accordance with Section 2230.

25 "(f) A fictitious name permit issued to any licensee
26 in a sole practice is automatically revoked in the event the
27 licensee's certificate to practice medicine...is revoked..."

OVERVIEW OF CASE

1
2 22. Beginning in or before 1993, and continuing until
3 on or after January 26, 1996, respondent has been advertising,
4 offering, and performing medical services for the cosmetic
5 lengthening and widening (aka "augmenting" or "girth enhance-
6 ment") of men's penises, which procedures are collectively
7 referred to herein as "cosmetic penile enhancement surgery" or
8 "cosmetic penile enlargement surgery." Cosmetic penile enhance-
9 ment is investigational or experimental surgery which is rela-
10 tively new; there are no validated statistics regarding the
11 efficacy, safety, or positive outcome of such procedures. In
12 connection with his performance of cosmetic penile enhancement
13 surgery and the offering of said services:

- 14 (a) respondent has engaged in false and misleading advertising
15 about the benefits of cosmetic penile enhancement surgery
16 and/or about his qualifications to perform same;
- 17 (b) respondent has employed a sales staff whose job it is to
18 procure patients and who are paid on a commission basis;
- 19 (c) respondent has failed to provide his patients complete and
20 truthful disclosure and/or appropriate pre-operative coun-
21 selling about the details and risks and complications of the
22 surgical procedures which he advertised, offered, and/or
23 intended to perform;
- 24 (d) through a marketing scheme incorporating false advertising
25 (nationwide), a high-pressure sales staff, and other means,
26 respondent actively has concealed material information about
27 penile enhancement surgery from his (prospective) patients;

- 1 (e) respondent has neglected, pre-operatively, to ascertain
2 patients' medical histories properly and/or to conduct
3 appropriate physical examinations of his patients;
- 4 (f) respondent has failed to abide by practices regarding ster-
5 ility in the operating room: he has inter alia reused
6 intravenous fluid bottles and tubing, as well as anesthesia
7 squeeze bags and tubing, and he does not replace
8 contaminated suture needles;
- 9 (g) respondent has failed to make sufficient medical records for
10 his cosmetic penile enhancement surgery patients and has
11 neglected to document sufficiently the details of cosmetic
12 penile enhancement surgeries;
- 13 (h) respondent has neglected to provide appropriate and neces-
14 sary post-operative care for his patients;
- 15 (i) respondent has made false and/or misleading entries in
16 patients' medical records regarding (1) pre-operative
17 histories and physical exams, (2) pre-operative counselling,
18 (3) surgical outcomes, (4) the complications and problems
19 suffered in connection with penile lengthening and/or
20 widening surgery, and (5) dates relevant to medical
21 treatment;
- 22 (j) respondent has been intoxicated while in attendance upon
23 patients;
- 24 (k) respondent has used unapproved fictitious business names.
25 The details of these allegations are set forth with greater
26 particularity below.

27 /

1 26. Patient #1 made an appointment to have the penile
2 lengthening surgery on March 9, 1995, at 4:00 p.m., in respon-
3 dent's Culver City office. Respondent required Patient #1 to pay
4 for the surgery at the time he scheduled his appointment, so
5 Patient #1 charged the surgery on a credit card.

6 27. Since Patient #1 was not given any pre-operative
7 instructions, he telephoned one of respondent's other offices to
8 get same.

9 28. On March 9, 1994, at approximately 2:30 p.m.,
10 Patient #1 presented at respondent's Culver City office for the
11 penile lengthening operation. Patient #1 felt ambivalent and
12 somewhat undecided about the surgery at the time he arrived for
13 his appointment.

14 29. After waiting in the patient waiting room for a
15 couple of hours, Patient #1 was escorted to respondent's office.
16 Respondent briefly examined the genitals of Patient #1. This was
17 the full extent of the pre-operative examination. This was
18 Patient #1's first meeting with respondent.

19 30. Respondent asked about the fact that Patient #1
20 was not getting the penile widening surgery. Patient #1 replied
21 that he felt unsure about any surgery but particularly unsure
22 about the widening surgery. Patient #1 said to respondent, "Why
23 don't you be the judge [of whether I should have the widening
24 surgery]." Respondent did not reply, but respondent's staff
25 later asked Patient #1 to tender additional payment, for the
26 widening surgery.

27 /

1 31. After examining the genitalia of Patient #1,
2 respondent gave Patient #1 some papers to fill out and told him
3 to watch a short video presentation about the surgery.
4 Respondent then left the office. Patient #1 stayed behind to
5 fill out the papers and to watch the video tape. The papers
6 consisted of a health history questionnaire and consent forms for
7 the surgery and anesthesia. Patient #1 filled out the papers but
8 did not sign either consent form. The video Patient #1 saw
9 consisted of a lay person's explanation of the surgery, and
10 contained little or no information about risks of the surgery,
11 possible complications, or post-surgical instructions.

12 32. After viewing the video, Patient #1 was given
13 prescriptions for a pain killer and antibiotic, which Patient #1
14 immediately had filled at the pharmacy in respondent's building.

15 33. Patient #1 then underwent surgery for both penile
16 lengthening and penile widening. Respondent made very few notes
17 from this surgery.

18 34. Prior to the commencement of the surgery, no one
19 advised Patient #1, in writing or orally, of any of the
20 following:

21 A. Common complications or phenomena involving
22 fat injections include these-- a great deal of injected fat can
23 be lost; injected fat can become encapsulated and/or reabsorbed
24 and/or create scar tissue, any or all of which can cause a lumpy,
25 bumpy appearance, substantial unevenness, or crookedness; repeat
26 fat injections are frequently required; injected fat can cause
27 the loose penile skin to fold over and create what appears to be

1 a [new] foreskin (possibly necessitating re-circumcision); the
2 injecting of fat into the penis in an investigational or
3 experimental, controversial procedure for which there is no
4 verified, published, peer-reviewed data;

5 B. Common complications or phenomena involving
6 penile lengthening include these-- the severed suspensory liga-
7 ment can heal so that the penis is shorter after the operation;
8 the penis only looks longer, without any increase in the length
9 of the "usable" aspect of the penis; there probably will be no
10 increase in length upon erection; the severing of suspensory
11 ligament can cause a loss of penile stability during erection,
12 with loss of some elevation upon erection; the V-Y incision can
13 cause hairy skin to cover the newly extended portion of the pen-
14 ile shaft; the V-Y incision can create a fleshy lump at the base
15 of the abdomen and/or at the base of the penis; the severing of
16 the suspensory ligament for the cosmetic lengthening of the penis
17 is an investigational or experimental, controversial procedure
18 for which there is no verified, published, peer-reviewed data.

19 35. Prior to the commencement of the surgery, no one
20 gave Patient #1 any counselling about his reasons for having the
21 surgery or about the advisability of having the cosmetic penile
22 enhancement procedures performed. Respondent's chart notes to
23 the contrary are false.

24 36. Prior to the commencement of the surgery, other
25 than respondent's examination of his genitalia, Patient #1 did
26 not receive a physical examination, and no one discussed with him
27 his medical history.

1 37. After the surgery, a nurse gave Patient #1 a few
2 post-surgical instructions and told Patient #1 that if there were
3 any problems, he could return to see respondent at any time.
4 Respondent returned to his home in extreme discomfort.

5 38. In the days following the surgery, Patient #1
6 experienced escalating, debilitating pain and noticed various odd
7 phenomena in his penis (e.g., blistering, bending, development of
8 a huge foreskin, two different kinds of discharge). Patient #1
9 repeatedly advised respondent and his staff of his symptoms and
10 degree of discomfort. On March 14, 1994, and again on March 18,
11 1994, Patient #1 made post-operative visits to respondent's
12 office and listed his complaints at each visit. Respondent
13 merely examined the genitalia of Patient #1 and told him that the
14 complaints were normal post-operative phenomena which would soon
15 disappear. During the post-operative visits, neither respondent
16 nor his staff took the vital signs of Patient #1 or examined him
17 other than to look at his genitalia.

18 39. On or about March 19 or 20, 1994, Patient #1
19 noticed an unpleasant odor emanating from the incision site. Res-
20 pondent's staff advised Patient #1 that such an odor was normal.

21 40. The odor became unbearable, and notwithstanding
22 regular reports from and complaints by Patient #1, neither
23 respondent nor his staff expressed any concern about it.

24 41. The medical record which respondent maintained for
25 Patient #1 reflects very few notes of the complaints of and
26 problems experienced by Patient #1.

27 /

1 42. On or about March 25, 1994, Patient #1 sought
2 medical treatment at a Navy medical facility which referred him
3 to Balboa Hospital. Patient #1 was admitted to Balboa Hospital
4 on March 30, 1994, for surgical debridement of a massive
5 infection at the V-Y incision site. Patient #1 was hospitalized
6 for approximately 10 days in connection with said infection.

7 43. On or about July 5, 1994, Patient #1 was
8 readmitted to the hospital for a circumcision of the huge
9 protrusion flesh which resulted from the penile widening
10 procedure. The protruding flesh had been seriously interfering
11 with Patient #1's ability to urinate.

12 44. Today, Patient #1's penis still appears to have a
13 foreskin (notwithstanding the July 1994 re-circumcision), is
14 bent, and is scarred from the circumcision performed at Balboa
15 Hospital, as well as from the V-Y incision. The length and width
16 of his penis are basically the same as before the surgery, except
17 that his penis now has some loose fat around it. He has a marked
18 loss of sensation in my penis. Notwithstanding these
19 complications, respondent has noted in the medical records for
20 Patient #1 that Patient #1 has an "excellent" or "nice" result.

21 45. If he had been fully advised about the risks and
22 complications and experimental nature of the cosmetic penile
23 enhancement surgery, Patient #1 would not have consented to same.

24 46. The only photographs or measurements respondent
25 took of Patient #1 occurred on the date of the penile enhancement
26 surgery.

27 /

1 Causes for License Discipline

2 47. By virtue of the facts set forth above, respondent
3 was grossly negligent in his diagnosis, care, and treatment of
4 Patient #1. Gross negligence is unprofessional conduct under B&P
5 § 2234(b). Such unprofessional conduct constitutes grounds to
6 impose discipline upon respondent's Physician's and Surgeon's
7 Certificate pursuant to B&P §§ 2234, 2220.

8 48. By virtue of the facts set forth above, respondent
9 engaged in repeated acts of negligence in his diagnosis, care,
10 and treatment of Patient #1. Repeated negligent acts are
11 unprofessional conduct under B&P § 2234(c). Such unprofessional
12 conduct constitutes grounds to impose discipline upon
13 respondent's Physician's and Surgeon's Certificate pursuant to
14 B&P §§ 2234, 2220.

15 49. By virtue of the facts set forth above, respondent
16 was incompetent in his diagnosis, care, and treatment of Patient
17 #1. Incompetence is unprofessional conduct under B&P § 2234(d).
18 Such unprofessional conduct constitutes grounds to impose
19 discipline upon respondent's Physician's and Surgeon's
20 Certificate pursuant to B&P §§ 2234, 2220.

21 50. By virtue of the facts set forth above, respondent
22 engaged in dishonest and corrupt acts in connection with his mar-
23 keting scheme, advertising, informed consent, diagnosis, care,
24 and treatment of Patient #1. Dishonest and corrupt acts are un-
25 professional conduct under B&P §2234(e). Such unprofessional con-
26 duct constitutes grounds to impose discipline upon respondent's
27 Physician's and Surgeon's Certificate under B&P §§ 2234, 2220.

1 55. The advertisements appealed to Patient #2, who
2 particularly hoped to have a larger erect penis so that he could
3 perform better as a lover.

4 56. In or around mid-November 1993, Patient #2 called
5 the telephone number set forth in the ad for respondent's Orange
6 County office and made an appointment for a free consultation at
7 that office a few days later. Patient #2 appeared for the sched-
8 uled appointment, at which he met with "Dean," a representative
9 of respondent who seemed to be more of a sales person than a med-
10 ical professional or allied health worker. Dean showed Patient
11 #2 a series of "before" and "after" photographs of penises which
12 had undergone the enlargement surgery. None of the "after"
13 photos showed penises with any deformities. As to the penises
14 which underwent both widening and lengthening procedures, the
15 penises appeared to have twice the volume in the "after" photo as
16 compared to the "before" photo. Dean told Patient #2 that he
17 could expect results similar to the ones depicted in the photo-
18 graphs. Dean also told Patient #2 that the penile lengthening
19 procedure produces an increase in penile length of 1½" to 3".

20 57. Dean seemed unable to give much detail about the
21 surgery and encouraged Patient #2 to make an appointment to see
22 respondent for another free consultation.

23 58. Patient #2 then made an appointment for a free
24 consultation with respondent, but was charged a \$200.00 fee for
25 the appointment. When Patient #2 questioned this charge for a
26 "free" consultation, respondent's staff said that the \$200.00
27 would be deducted from the price of any subsequent penile

1 enlargement surgery.

2 59. On December 2, 1993, Patient #2 went to
3 respondent's Culver City office, the Men's Institute of Cosmetic
4 Surgery, at 3831 Hughes Avenue, Culver City, California. Prior
5 to this appointment, Patient #2 wrote down all his questions
6 about the surgery and brought his list of questions with him to
7 the appointment so that he would be sure to ask each of them.

8 60. Initially, at this appointment, Patient #2 was
9 shown a short video tape about penile enlargement surgery. After
10 he watched the video, respondent examined the genitalia of
11 Patient #2. During and after said examination, Patient #2 asked
12 respondent each of the prepared questions, and wrote down each of
13 respondent's answers.

14 61. Patient #2 asked respondent about the length
15 increase he could expect from the surgery. Patient #2 expressed
16 confusion over respondent's ads claiming a doubling in size, as
17 opposed to respondent's representative in Newport Beach citing an
18 increase of at least $1\frac{1}{2}$ " , as opposed to the video's reference to
19 a minimum increase of $\frac{1}{2}$ ". Patient #2 asked respondent to resolve
20 this discrepancy by stating the true minimum increase in length
21 he could expect. Patient #2 specifically told respondent that he
22 would not be happy with just a $\frac{1}{2}$ " increase. Respondent replied
23 by stating "Don't worry. You will be happy."

24 62. Patient #2 told respondent that he wanted to see
25 the surgical consent form on that day, if there was one. Respon-
26 dent responded by becoming defensive and started talking about
27 the large number of surgeries he had performed successfully,

1 without any bad results or dissatisfied patients. Respondent did
2 not provide Patient #2 with a surgical consent form.

3 63. Patient #2 decided to have both the penile
4 lengthening and penile widening surgeries. His surgery was
5 scheduled for December 9, 1993, at about 3:00 p.m., at respon-
6 dent's office in Culver City. Respondent insisted upon payment
7 prior to the surgery. Patient #2 paid by credit card; respondent
8 would not accept a check. After Patient #2 scheduled the
9 surgery, respondent provided Patient #2 with prescriptions for a
10 pain killer and an antibiotic.

11 64. On December 9, 1993, Patient #2 arrived timely for
12 his surgical appointment at respondent's office in Culver City.
13 Shortly after arriving at respondent's office, Patient #2 was
14 asked to fill out an anesthesia consent form, a health question-
15 naire, and a three-page surgical consent form. Patient #2 then
16 was dressed in a surgical gown and ultimately taken to surgery,
17 where he was anesthetized and underwent the lengthening and
18 widening procedures. Respondent made very few notes regarding the
19 performance of this surgery.

20 65. Prior to the commencement of the surgery, no one
21 advised Patient #2, orally or in writing, of any of the
22 following:

23 A. Common complications or phenomena involving
24 fat injections include these-- a great deal of injected fat can
25 be lost; injected fat can become encapsulated and/or reabsorbed
26 and/or create scar tissue, any or all of which can cause a lumpy,
27 bumpy appearance, substantial unevenness, or crookedness; repeat

1 fat injections are frequently required; injected fat can cause
2 the loose penile skin to fold over and create what appears to be
3 a [new] foreskin (possibly necessitating re-circumcision); the
4 injecting of fat into the penis in an investigational or
5 experimental, controversial procedure for which there is no
6 verified, published, peer-reviewed data;

7 B. Common complications or phenomena involving
8 penile lengthening include these-- the severed suspensory liga-
9 ment can heal so that the penis is shorter after the operation;
10 the penis only looks longer, without any increase in the length
11 of the "usable" aspect of the penis; there probably will be no
12 increase in length upon erection; the severing of suspensory
13 ligament can cause a loss of penile stability during erection;
14 the V-Y incision can cause hairy skin to cover the newly extended
15 portion of the penile shaft; the V-Y incision can create a
16 fleshy lump at the base of the abdomen and/or at the base of the
17 penis; the severing of the suspensory ligament for the cosmetic
18 lengthening of the penis is an investigational or experimental,
19 controversial procedure for which there is no verified,
20 published, peer-reviewed data.

21 66. Prior to the commencement of the surgery, no one
22 gave Patient #2 any counselling about his reasons for having the
23 surgery or about the advisability of having the penile
24 enhancement procedures performed. Respondent's chart notes to
25 the contrary are false.

26 67. Prior to the commencement of the surgery, other
27 than respondent's examination of his genitalia, Patient #2 did

1 not receive a physical examination, and no one discussed with
2 Patient #2 his medical history. Patient #2 did not even see
3 respondent at all on the day of the surgery.

4 68. Following the surgery, Patient #2 was rushed out
5 the door.

6 69. Immediately after the surgery, Patient #2 was in a
7 great deal of pain. He continued to be in great pain for about a
8 month following the surgery.

9 70. The day after surgery, while staying at the hotel
10 in Los Angeles, Patient #2 noticed a bubble had developed on his
11 penis. He called respondent's office to advise him of this
12 development. Respondent was not available, but a member of his
13 staff told Patient #2 that it was nothing to worry about. On at
14 least two further occasions during the first post-surgical week,
15 Patient #2 called respondent's office with complaints about
16 further troublesome developments.

17 71. Patient #2 made several post-surgical visits to
18 respondent's office. For each of the visits, neither respondent
19 nor his staff took the vital signs of Patient #2 or examined him
20 (other than in the groin area).

21 72. On December 17, 1993, Patient #2 returned to
22 respondent's office and advised him of the following problems and
23 difficulties: (1) the bubble on his penis was unsightly; (2) the
24 sutures were holding only one side of the incision; the other
25 side looked open, was exuding pus, and was starting to smell very
26 bad; (3) the pain was much worse than respondent had indicated
27 it would be. Respondent did not seem concerned about the

1 complaints and problems and stated that all these phenomena were
2 normal.

3 73. Although respondent stated in the medical record
4 for Patient #2 that he removed the sutures in January 1994,
5 respondent did not remove the sutures until March 1994.

6 74. On or about March 1, 1994, Patient #2 returned to
7 respondent's office and complained about the bubble, the slow
8 healing of his incision, and pain. Respondent examined the penis
9 and "mashed" the bubble. Respondent said that all these things
10 were normal and that the bubble would go away. (The bubble did
11 go away some months later.) Respondent removed the sutures on
12 this date; the incision site was not well-healed at this time.

13 75. About three to four months after surgery, Patient
14 #2 began to notice the development of a hard lump near the middle
15 of the shaft of his penis, on the left side. In or around the
16 same time, he also noticed a soft lump, also at the middle of the
17 shaft of his penis, on the top right.

18 76. About four months after surgery, Patient #2
19 started noticing a fold or line across his penis. This fold
20 worsened over next month and ultimately caused his penis to bend
21 up at 45 degree angle.

22 77. About four months after the surgery, the condition
23 of the penis of Patient #2 was as follows: (1) it was still
24 partially swollen; (2) it was bent at an angle of about 45
25 degrees, about 1½" from the tip; (3) it still had the big bubble
26 on the penile shaft; (4) it had the two aforementioned nodules,
27 each over one centimeter in diameter, on the shaft of the penis;

1 (5) there was now hair on the shaft of his penis (which made the
2 use of a condom extremely uncomfortable); (6) the bend, bumps,
3 bubble, and hair (on the shaft of the penis) caused the penis of
4 Patient #2 to have a very unattractive appearance.

5 78. About four or five months after the surgery (after
6 the swelling subsided), Patient #2 noticed that his penis, when
7 erect, was about $\frac{1}{2}$ " shorter than before the surgery.

8 79. In May 1994, Patient #2 had sex for the first time
9 since the surgery. He noticed that the head of his penis would
10 not engorge during erection. This caused his penis to be even
11 shorter during sex, for all practical purposes.

12 80. By June 1994, the bubble on the penis of Patient
13 #2 had subsided. Other than that, there was no improvement in
14 any of Patient #2's problems or complaints. On June 9, 1994,
15 Patient #2 returned to respondent's office. At that appointment,
16 Patient #2 gave respondent a letter in which Patient #2 described
17 his concerns. Respondent assured him that everything was normal
18 and poked the two nodules in his penis with a needle.

19 81. Patient #2 returned to respondent's office again
20 in July and August 1994. Again, respondent put needles into the
21 two nodules in the penis. Still, there were no improvements.

22 82. During the August 1994 appointment, respondent
23 asked Patient #2 to send him a picture of his penis when erect,
24 to demonstrate to him the severe angle about which Patient #2 had
25 been complaining. On or about August 30, 1994, Patient #2 sent
26 respondent the requested photograph, along with a cover letter.
27 Respondent did not incorporate this correspondence, or other

1 correspondence from Patient #2, into the medical record.

2 83. In September 1994, respondent advised Patient #2
3 that he should receive further fat injections, which would cost
4 \$500.00. Patient #2 declined the further injections, upon
5 further medical advice.

6 84. Today, the length of Patient #2's penis, when
7 erect, is still $\frac{1}{2}$ " shorter than before the surgery, with another
8 $\frac{1}{2}$ " of the erect length as unengorged soft tissue. The flaccid
9 length is the same as before the surgery. The width is basically
10 the same as before the surgery, except where the two lumps are -
11 but that is asymmetrical. The bend in his penis is more
12 noticeable upon erection than in the flaccid state. The penis
13 looks somewhat like a crook neck squash.

14 85. The medical record which respondent maintained for
15 Patient #2 reflects very few notes of the complaints of and
16 problems experienced by Patient #2. To the contrary, respondent
17 described Patient #2 as having "good" and "excellent" results.

18 86. Respondent only photographed and measured the
19 penis of Patient #2 on the date of surgery, December 9, 1993.
20 His "before" and "after" pictures both were taken on that day.
21 Respondent took no other pictures or measurements of his penis on
22 any other date.

23 87. If he had been fully and truthfully advised of the
24 risks, complications, limitations, and experimental nature of
25 cosmetic penile enhancement surgery, Patient #2 would not have
26 consented to same.

27 /

1 Causes for License Discipline

2 88. By virtue of the facts set forth above, respondent
3 was grossly negligent in his diagnosis, care, and treatment of
4 Patient #2. Gross negligence is unprofessional conduct under B&P
5 § 2234(b). Such unprofessional conduct constitutes grounds to
6 impose discipline upon respondent's Physician's and Surgeon's
7 Certificate pursuant to B&P §§ 2234, 2220.

8 89. By virtue of the facts set forth above, respondent
9 engaged in repeated acts of negligence in his diagnosis, care and
10 treatment of Patient #2. Repeated acts of negligence are unpro-
11 fessional conduct under B&P §2234(c). Such unprofessional conduct
12 constitutes grounds to impose discipline upon respondent's Phys-
13 ician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

14 90. By virtue of the facts set forth above, respondent
15 was incompetent in his diagnosis, care, and treatment of Patient
16 #2. Incompetence is unprofessional conduct under B&P § 2234(d).
17 Such unprofessional conduct constitutes grounds to impose
18 discipline upon respondent's Physician's and Surgeon's
19 Certificate pursuant to B&P §§ 2234, 2220.

20 91. By virtue of the facts set forth above, respondent
21 engaged in dishonest and corrupt acts in connection with his
22 marketing scheme, advertising, informed consent, diagnosis, care,
23 and treatment of Patient #2. Dishonest and corrupt acts are
24 unprofessional conduct under B&P §2234(e). Such unprofessional
25 conduct constitutes grounds to impose discipline upon
26 respondent's Physician's and Surgeon's Certificate pursuant to
27 B&P §§ 2234, 2220.

1 92. By virtue of the facts set forth above,
2 respondent's false statements in his marketing scheme,
3 advertising, informed consent document, and chart entries re:
4 Patient #2 constitute unprofessional conduct under B&P § 2261.
5 Such unprofessional conduct constitutes grounds to impose
6 discipline upon respondent's Physician's and Surgeon's
7 Certificate pursuant to B&P §§ 2234, 2220.

8 93. By virtue of the facts set forth above,
9 respondent's false statements in the medical record of Patient #2
10 constitute unprofessional conduct under B&P § 2262. Such
11 unprofessional conduct constitutes grounds to impose discipline
12 upon respondent's Physician's and Surgeon's Certificate pursuant
13 to B&P §§ 2234, 2220.

14

15

III. IN RE: PATIENT #3

16 94. "Patient #3" is an adult male individual who at
17 all times relevant herein resided in the State of California.

18 95. For about six months prior to September 1993,
19 Patient #3 noticed in the business section of one or more
20 newspapers regular, recurring advertisements promoting penile
21 enhancement surgery by Melvyn Rosenstein, M.D., and the Men's
22 Institute of Cosmetic Surgery. The advertisements indicated,
23 inter alia, that respondent was famous for having performed said
24 surgery hundreds or thousands of times.

25 96. In or around late September or early October 1993,
26 Patient #3 called the telephone number for Orange County set
27 forth in respondent's newspaper ad and was given an appointment

1 for a free consultation at respondent's Newport Beach office.
2 Several days later, Patient #3 appeared at the scheduled appoint-
3 ment and met with respondent's representative, a young adult
4 male. The young man said the operation was simple surgery which
5 has been performed thousands of times without a single complica-
6 tion or complaint, and that respondent was the acknowledged
7 leader in the United States in that type of surgery. When Patient
8 #3 asked about the length of post-surgical convalescence, the
9 young man stated that most people return to work the following
10 day. When Patient #3 asked about the degree of scarring, the
11 young man stated that any discernable scarring would be concealed
12 by pubic hair. The young man showed Patient #3 a pair of
13 "before-and-after" pictures in which the depicted penis was both
14 longer and wider after the surgery, without any penile deformity.
15 The young man stated that patients who receive the penile
16 lengthening surgery will gain at least 1" in length. When
17 Patient #3 indicated an interest in the penile lengthening only,
18 the young man urged Patient #3 to have both procedures performed.

19 97. Patient #3 made an appointment to have both penile
20 lengthening and widening surgery on October 18, 1993, in
21 respondent's Culver City office.

22 98. On October 18, 1993, at the scheduled time,
23 Patient #3 went to respondent's office (the Men's Institute of
24 Cosmetic Surgery), located on Hughes Avenue in Culver City.

25 99. Upon his arrival at respondent's office, Patient
26 #3 paid for the surgery and provided a filled-out health history
27 questionnaire and signed two consent forms (including an eight-

1 page-long penile surgery consent form) which he was given little
2 time to read.

3 100. Shortly thereafter, Patient #3 was taken to a room
4 and instructed to change into a hospital gown. Soon thereafter,
5 respondent came into the room. Respondent (who had not
6 previously met or examined Patient #3) looked quickly at the
7 genitalia of Patient #3. This was the full extent of the pre-
8 operative examination. Respondent left the room shortly
9 thereafter, and Patient #3 was taken to the operating room.

10 101. Patient #3 then underwent surgery for both penile
11 lengthening and penile widening, with general anesthesia.
12 Respondent made very few notes from this surgery.

13 102. Prior to the commencement of the surgery, no one
14 advised Patient #3 of any of the following:

15 A. Common complications or phenomena involving
16 fat injections include these-- a great deal of injected fat can
17 be lost; injected fat can become encapsulated and/or reabsorbed
18 and/or create scar tissue, any or all of which can cause a lumpy,
19 bumpy appearance, substantial unevenness, or crookedness; repeat
20 fat injections are frequently required; injected fat can cause
21 the loose penile skin to fold over and create what appears to be
22 a [new] foreskin (possibly necessitating re-circumcision); the
23 injecting of fat into the penis in an investigational or
24 experimental, controversial procedure for which there is no
25 verified, published, peer-reviewed data;

26 B. Common complications or phenomena involving
27 penile lengthening include these-- the severed suspensory liga-

1 ment can heal so that the penis is shorter after the operation;
2 the penis only looks longer, without any increase in the length
3 of the "usable" aspect of the penis; there probably will be no
4 increase in length upon erection; the severing of suspensory
5 ligament can cause a loss of penile stability during erection,
6 with loss of some elevation upon erection; the V-Y incision can
7 cause hairy skin to cover the newly extended portion of the
8 penile shaft; the V-Y incision can create a fleshy lump at the
9 base of the abdomen and/or at the base of the penis; the
10 severing of the suspensory ligament for the cosmetic lengthening
11 of the penis is an investigational or experimental, controversial
12 procedure for which there is no verified, published, peer-
13 reviewed data.

14 103. Prior to the commencement of the surgery, no one
15 gave Patient #3 any counselling about his reasons for having the
16 surgery or about the advisability of having the cosmetic penile
17 enhancement procedures performed.

18 104. Prior to the commencement of the surgery, other
19 than the brief examination of his genitalia, Patient #3 did not
20 receive a physical examination, and no one discussed with him his
21 medical history. Accordingly, respondent failed to determine
22 that Patient #3 had a significant history of alcohol abuse, i.e.,
23 a possible indication of surgical risks.

24 105. When Patient #3 regained consciousness after the
25 surgery, Patient #3 was given verbal post-surgical instructions
26 and prescriptions for an antibiotic and pain killer. The post-
27 surgical instructions did not provide that Patient #3 needed to

1 return to respondent's office for further appointments.

2 106. In the days following the surgery, the fat injec-
3 ted into the penis of Patient #3 "fell" toward the head of the
4 penis, and a pseudo-foreskin developed. This new "foreskin"
5 tightly enveloped the head of the penis such that Patient #3
6 could not see it. This tight new "foreskin" was not only excru-
7 ciatingly painful but also caused difficulty with urination (like
8 a "sprinkler"). During this same time frame, Patient #3 also
9 began noticing that his penis was numb along the top side.
10 Patient #3 telephoned respondent's office on several occasions to
11 advise him about these developments. His office personnel seemed
12 unconcerned about the problems Patient #3 described, and
13 respondent was unavailable to come to the phone or to return the
14 phone calls.

15 107. Ultimately, on or before December 28, 1993,
16 Patient #3 scheduled and presented for a return appointment with
17 respondent. During this appointment, respondent took a quick
18 look at the new fatty "foreskin" and indicated he would re-
19 circumcise Patient #3. Respondent initially demanded his full
20 circumcision fee, but then agreed to accepting half his fee, to
21 wit, \$750.00. Patient #3 was required to pay the \$750.00 fee
22 before respondent would perform the circumcision.

23 108. During the circumcision procedure, respondent
24 started cutting the penis of Patient #3 before the anesthetic had
25 fully taken effect. After the procedure was finished, respondent
26 placed in his hand the skin he had removed, showed it to Patient
27 #3, and said in a rather harsh tone, "See that! You know what we

1 do with that? We sell it to cocksuckers for chewing gum!"

2 Patient #3 was appalled and felt uncomfortable returning to
3 respondent for further treatment.

4 109. During this second appointment with respondent, no
5 one took the vital signs of Patient #3. Other than respondent's
6 examination of his genitalia, Patient #3 received no further
7 physical examination. Respondent made no notes of this surgical
8 procedure and did not provide informed consent to Patient #3.

9 110. Contrary to respondent's medical records, Patient
10 #3 was not at respondent's office on four separate occasions.
11 Patient #3 was there on two occasions only, as described above.
12 Also, contrary to respondent's medical records, the circumcision
13 occurred prior to January 25, 1994, as explained below.

14 111. On or about January 19, 1994, and for the next
15 several weeks, Patient #3 sought follow-up medical care from
16 another physician for complications from the circumcision.

17 112. Today, Patient #3 has a partially numb penis, and
18 cannot achieve a complete, full erection. (Hence, he has not
19 been sexually active since the penile enhancement surgery.)
20 Patient #3 occasionally achieves a "semi-erection," during which
21 the penis becomes banana-shaped, a post-surgical development
22 which did not exist prior to the penile enhancement surgery.
23 Also, the triangular patch of skin above his penis is without
24 hair (creating a bald spot) and appears to be a mass of scar
25 tissue. With respect to the current appearance of his penis, it
26 is lumpy, but it is neither longer nor wider than it was prior to
27 respondent's surgery.

1 113. If he had been fully advised about the risks and
2 complications and experimental nature of the cosmetic penile
3 enhancement surgery, Patient #3 would not have consented to same.

4 114. The only photographs or measurements respondent
5 took of Patient #3 occurred on the date of the penile enhancement
6 surgery.

7
8 Causes for License Discipline

9 115. By virtue of the facts set forth above, respondent
10 was grossly negligent in his diagnosis, care, and treatment of
11 Patient #3. Gross negligence is unprofessional conduct under B&P
12 § 2234(b). Such unprofessional conduct constitutes grounds to
13 impose discipline upon respondent's Physician's and Surgeon's
14 Certificate pursuant to B&P §§ 2234, 2220.

15 116. By virtue of the facts set forth above, respondent
16 engaged in repeated acts of negligence in his diagnosis, care,
17 and treatment of Patient #3. Repeated acts of negligence are
18 unprofessional conduct under B&P § 2234(c). Such unprofessional
19 conduct constitutes grounds to impose discipline upon
20 respondent's Physician's and Surgeon's Certificate pursuant to
21 B&P §§ 2234, 2220.

22 117. By virtue of the facts set forth above, respondent
23 was incompetent in his diagnosis, care, and treatment of Patient
24 #3. Incompetence is unprofessional conduct under B&P § 2234(d).
25 Such unprofessional conduct constitutes grounds to impose
26 discipline upon respondent's Physician's and Surgeon's
27 Certificate pursuant to B&P §§ 2234, 2220.

1 118. By virtue of the facts set forth above, respondent
2 engaged in dishonest and corrupt acts in connection with his
3 marketing scheme, advertising, informed consent, diagnosis, care,
4 and treatment of Patient #3. Dishonest and corrupt acts are
5 unprofessional conduct under B&P § 2234(e). Such unprofessional
6 conduct constitutes grounds to impose discipline upon
7 respondent's Physician's and Surgeon's Certificate pursuant to
8 B&P §§ 2234, 2220.

9 119. By virtue of the facts set forth above,
10 respondent's false statements in his marketing scheme,
11 advertising, informed consent document, and chart entries re:
12 Patient #3 constitute unprofessional conduct under B&P § 2261.
13 Such unprofessional conduct constitutes grounds to impose
14 discipline upon respondent's Physician's and Surgeon's
15 Certificate pursuant to B&P §§ 2234, 2220.

16 120. By virtue of the facts set forth above,
17 respondent's false statements in the medical record of Patient #3
18 constitute unprofessional conduct under B&P § 2262. Such
19 unprofessional conduct constitutes grounds to impose discipline
20 upon respondent's Physician's and Surgeon's Certificate pursuant
21 to B&P §§ 2234, 2220.

22

23

IV. IN RE: PATIENT #5

24 121. "Patient #5" is an adult male individual who at
25 all times relevant herein resided in the State of California.

26 122. In or around December 1993, Patient #5 noticed a
27 newspaper advertisement(s) promoting penile enhancement surgery

1 by Melvyn Rosenstein, M.D., and the Men's Institute of Cosmetic
2 Surgery. The advertisements contained many unproven or
3 unprovable claims.

4 123. In or around December 1993, Patient #5 called the
5 telephone number set forth in respondent's newspaper ad and was
6 given an appointment to be seen in respondent's Los Angeles
7 office. Several days later, Patient #5 appeared at the scheduled
8 appointment and met with respondent's representative, a young
9 adult male. The young man showed Patient #5 pairs of "before-
10 and-after" pictures in which the depicted penis was both longer
11 and wider after the surgery, without any penile deformity. The
12 young man told Patient #5 that he would gain 1" to 1½" in length
13 penile length. The young man said inter alia that the operation
14 was simple surgery which has been performed thousands of times
15 without a single complication or complaint, that respondent was
16 the acknowledged leader in the United States in that type of
17 surgery, and that most people return to work the following day or
18 soon thereafter.

19 124. During this appointment, Patient #5 requested
20 penile lengthening surgery (but not penile widening surgery) and
21 was scheduled for surgery on January 10, 1994, in respondent's
22 Culver City office. Pursuant to demand, Patient #5 tendered the
23 \$3500.00 payment in full prior to the date of surgery.

24 125. On January 10, 1994, at the scheduled time,
25 Patient #5 went to respondent's office (the Men's Institute of
26 Cosmetic Surgery), located on Hughes Avenue in Culver City.

27 /

1 126. Upon his arrival at respondent's office, Patient
2 #5 filled out a health history questionnaire and an anesthesia
3 consent form. He did not sign a surgical consent form.

4 127. Patient #5 then was taken to a room where he
5 watched a short videotape about the surgery.

6 128. Shortly thereafter, Patient #5 met respondent for
7 the first time. Respondent entered the room and looked quickly
8 at the genitalia of Patient #5. This was the full extent of the
9 pre-operative examination. Respondent told Patient #5 that the
10 operation was a very simple procedure which would take about an
11 hour. Respondent also made a reference to the use of liposuction
12 which Patient #5 did not understand. Respondent then left the
13 room. Shortly thereafter, Patient #5 was taken to the operating
14 room.

15 129. Patient #5 then underwent surgery for both penile
16 lengthening and penile widening, with general anesthesia.
17 Contrary to the anesthesia record, Patient #5 did not speak with
18 anyone about his health, nor did anyone ask him about same.
19 Respondent made very few notes from this surgery. The notes he
20 did make, however, falsely indicate that the patient received
21 only penile lengthening.

22 130. Prior to the commencement of the surgery, no one
23 advised Patient #5 of any of the following:

24 A. Common complications or phenomena involving
25 fat injections include these-- a great deal of injected fat can
26 be lost; injected fat can become encapsulated and/or reabsorbed
27 and/or create scar tissue, any or all of which can cause a lumpy,

1 bumpy appearance, substantial unevenness, or crookedness; repeat
2 fat injections are frequently required; injected fat can cause
3 the loose penile skin to fold over and create what appears to be
4 a [new] foreskin (possibly necessitating re-circumcision); the
5 injecting of fat into the penis in an investigational or
6 experimental, controversial procedure for which there is no
7 verified, published, peer-reviewed data;

8 B. Common complications or phenomena involving
9 penile lengthening include these-- the severed suspensory liga-
10 ment can heal so that the penis is shorter after the operation;
11 the penis only looks longer, without any increase in the length
12 of the "usable" aspect of the penis; there probably will be no
13 increase in length upon erection; the severing of suspensory
14 ligament can cause a loss of penile stability during erection,
15 with loss of some elevation upon erection; the V-Y incision can
16 cause hairy skin to cover the newly extended portion of the
17 penile shaft; the V-Y incision can create a fleshy lump at the
18 base of the abdomen and/or at the base of the penis; the
19 severing of the suspensory ligament for the cosmetic lengthening
20 of the penis is an investigational or experimental, controversial
21 procedure for which there is no verified, published, peer-
22 reviewed data.

23 131. Prior to the commencement of the surgery, no one
24 gave Patient #5 any counselling about his reasons for having the
25 surgery or about the advisability of having the cosmetic penile
26 enhancement procedures performed.

27 /

1 132. Prior to the commencement of the surgery, other
2 than the brief examination of his genitalia, Patient #5 did not
3 receive a physical examination, and no one discussed with him his
4 medical history.

5 133. When Patient #5 regained consciousness after the
6 surgery, Patient #5 was given verbal post-surgical instructions
7 and prescriptions for an antibiotic and pain killer. The post-
8 surgical instructions did not provide that Patient #5 needed to
9 return to respondent's office for further appointments.

10 134. Immediately following the surgery, the penis of
11 Patient #5 was not noticeably longer than it was prior to the
12 surgery (notwithstanding respondent's chart note of a pre-
13 operative length of 3" and a post-operative length of 5.5").

14 135. In the days following the surgery, the incision
15 site began to open up and exude a foul-smelling yellow pus.
16 Patient #5 returned to respondent's office, but respondent
17 advised him only to apply ice packs to his groin. No one took
18 the vital signs of Patient #5 at this visit.

19 136. Patient #5 applied the ice packs as directed by
20 respondent, but the incision site continued to fester. Patient
21 #5 returned again to respondent's office. This time, respondent
22 told Patient #5 that the incision site was infected. Respondent
23 advised Patient #5 only to apply baby powder to the incision site
24 to dry it up. Respondent did not prescribe any medication and
25 did not seem concerned about the condition of Patient #5. No one
26 took the vital signs of Patient #5 at this visit.

27 /

1 137. In or around April 1994, the incision site was not
2 yet healed. At this time, Patient #5 noted that his penis was
3 about .5" shorter than it was prior to the surgery and the
4 increase in girth was gone. Patient #5 returned to respondent's
5 office and complained about the shortening of his penis and the
6 slow healing. For this office visit, respondent noted "excellent
7 result" in the medical chart of Patient #5. Respondent advised
8 Patient #5 to purchase some weights to suspend from his penis.
9 Patient #5 purchased the weights and used them as directed, but
10 his penis did not become any longer.

11 138. In or around August 1994, Patient #5 returned to
12 respondent's office, complaining of a loss of penile length and
13 of impotence.² Respondent recommended that Patient #5 undergo
14 scar revision surgery to remove some of the scar tissue resulting
15 from the poor healing of the incision.

16 139. Patient #5 eventually agreed to undergo said
17 surgery by respondent. This scar revision surgery left the penis
18 of Patient #5 another $\frac{1}{2}$ " shorter (now a total of 1" shorter than
19 his pre-surgical length). Respondent made no operative note of
20 this surgery, and no informed consent was given. Respondent did
21 not conduct a pre-operative examination of Patient #5 prior to
22 the procedure.

23 140. Beginning in or about January 1995, Patient #5
24 sought follow-up medical care from other physicians for
25

26 4. On January 10, 1994, respondent noted that Patient #5
27 had no sexual dysfunction. In August 1994, however, respondent
noted that Patient #5 did have pre-operative sexual dysfunction.

1 complications from respondent's surgeries. The follow-up care
2 included efforts to correct the substantial scarring and loss of
3 length resulting from respondent's initial surgery.

4 141. If he had been fully advised about the risks and
5 complications and experimental nature of the cosmetic penile
6 enhancement surgery, Patient #5 would not have consented to same.

7 142. The only photographs or measurements respondent
8 took of Patient #5 occurred on the date of the penile enhancement
9 surgery.

10

11 Causes for License Discipline

12 143. By virtue of the facts set forth above, respondent
13 was grossly negligent in his diagnosis, care, and treatment of
14 Patient #5. Gross negligence is unprofessional conduct under B&P
15 § 2234(b). Such unprofessional conduct constitutes grounds to
16 impose discipline upon respondent's Physician's and Surgeon's
17 Certificate pursuant to B&P §§ 2234, 2220.

18 144. By virtue of the facts set forth above, respondent
19 engaged in repeated acts of negligence in his diagnosis, care,
20 and treatment of Patient #5. Repeated acts of negligence are
21 unprofessional conduct under B&P § 2234(c). Such unprofessional
22 conduct constitutes grounds to impose discipline upon
23 respondent's Physician's and Surgeon's Certificate pursuant to
24 B&P §§ 2234, 2220.

25 145. By virtue of the facts set forth above, respondent
26 was incompetent in his diagnosis, care, and treatment of Patient
27 #5. Incompetence is unprofessional conduct under B&P § 2234(d).

1 Such unprofessional conduct constitutes grounds to impose
2 discipline upon respondent's Physician's and Surgeon's
3 Certificate pursuant to B&P §§ 2234, 2220.

4 146. By virtue of the facts set forth above, respondent
5 engaged in dishonest and corrupt acts in connection with his
6 marketing scheme, advertising, informed consent, diagnosis, care,
7 and treatment of Patient #5. Dishonest and corrupt acts are
8 unprofessional conduct under B&P § 2234(e). Such unprofessional
9 conduct constitutes grounds to impose discipline upon
10 respondent's Physician's and Surgeon's Certificate pursuant to
11 B&P §§ 2234, 2220.

12 147. By virtue of the facts set forth above,
13 respondent's false statements in his marketing scheme,
14 advertising, informed consent document, and chart entries re:
15 Patient #5 constitute unprofessional conduct under B&P § 2261.
16 Such unprofessional conduct constitutes grounds to impose
17 discipline upon respondent's Physician's and Surgeon's
18 Certificate pursuant to B&P §§ 2234, 2220.

19 148. By virtue of the facts set forth above,
20 respondent's false statements in the medical record of Patient #5
21 constitute unprofessional conduct under B&P § 2262. Such
22 unprofessional conduct constitutes grounds to impose discipline
23 upon respondent's Physician's and Surgeon's Certificate pursuant
24 to B&P §§ 2234, 2220.

25

26 /

27 /

V. IN RE: PATIENT #6

1
2 149. "Patient #6" is an adult male individual who at
3 all times relevant herein resided in the State of California.

4 150. In or around December 1993, Patient #6 noticed a
5 newspaper advertisement(s) promoting penile enhancement surgery
6 by Melvyn Rosenstein, M.D., and the Men's Institute of Cosmetic
7 Surgery. The advertisements indicated, inter alia, that
8 respondent was the leading authority in penile surgery and that
9 he could achieve unproven gains in penile size via said penile
10 surgery.

11 151. In or around December 1993, Patient #6 called the
12 telephone number set forth in respondent's newspaper ad and was
13 given an appointment for a free consultation at respondent's
14 Century City office. Several days later, Patient #6 appeared at
15 the scheduled appointment and met with respondent's representa-
16 tive, Jonathan Yaker (respondent's stepson). Mr. Yaker showed
17 Patient #6 pairs of "before-and-after" pictures in which the
18 depicted penis was both longer and wider after the surgery,
19 without any penile deformity. Mr. Yaker said that respondent
20 would double the size of the penile shaft of Patient #6 and would
21 increase his penile length by at least 2". Mr. Yaker also told
22 Patient #5 inter alia that the operation was simple surgery which
23 has been performed thousands of times without a single
24 complication or complaint, that respondent was the acknowledged
25 leader in the United States in that type of surgery, that most
26 people return to work a day or so after surgery, and that any
27 discernable scarring would be concealed by pubic hair.

1 152. A couple of months later, Patient #6 made an
2 appointment to have both penile lengthening and widening surgery.
3 Per demand, Patient #6 paid for the procedure in advance.

4 153. On March 24, 1994, at the scheduled time, Patient
5 #6 went to respondent's office (the Men's Institute of Cosmetic
6 Surgery), located on Hughes Avenue in Culver City, to undergo
7 both surgical procedures. Prior to receiving the surgery,
8 Patient #6 filled out a health history questionnaire and signed a
9 three-page-long surgical consent form. He also saw a videotape.

10 154. Shortly prior to the surgery, Patient #6 met
11 respondent for the first time. Respondent looked quickly at the
12 genitalia of Patient #6. This was the full extent of the pre-
13 operative examination. Respondent left the room shortly
14 thereafter, and Patient #6 was taken to the operating room.

15 155. Patient #6 then underwent surgery for both penile
16 lengthening and penile widening, with general anesthesia.
17 Respondent made very few notes from this surgery.

18 156. Prior to the commencement of the surgery, no one
19 advised Patient #6 of any of the following:

20 A. Common complications or phenomena involving
21 fat injections include these-- a great deal of injected fat can
22 be lost; injected fat can become encapsulated and/or reabsorbed
23 and/or create scar tissue, any or all of which can cause a lumpy,
24 bumpy appearance, substantial unevenness, or crookedness; repeat
25 fat injections are frequently required; injected fat can cause
26 the loose penile skin to fold over and create what appears to be
27 a [new] foreskin (possibly necessitating re-circumcision); the

1 injecting of fat into the penis in an investigational or
2 experimental, controversial procedure for which there is no
3 verified, published, peer-reviewed data;

4 B. Common complications or phenomena involving
5 penile lengthening include these-- the severed suspensory liga-
6 ment can heal so that the penis is shorter after the operation;
7 the penis only looks longer, without any increase in the length
8 of the "usable" aspect of the penis; there probably will be no
9 increase in length upon erection; the severing of suspensory
10 ligament can cause a loss of penile stability during erection,
11 with loss of some elevation upon erection; the V-Y incision can
12 cause hairy skin to cover the newly extended portion of the pen-
13 ile shaft; the V-Y incision can create a fleshy lump at the base
14 of the abdomen and/or at the base of the penis; the severing of
15 the suspensory ligament for the cosmetic lengthening of the penis
16 is an investigational or experimental, controversial procedure
17 for which there is no verified, published, peer-reviewed data.

18 157. Prior to the commencement of the surgery, no one
19 gave Patient #6 any counselling about his reasons for having the
20 surgery or about the advisability of having the cosmetic penile
21 enhancement procedures performed.

22 158. Prior to the commencement of the surgery, other
23 than the brief examination of his genitalia, Patient #6 did not
24 receive a physical examination, and no one discussed with him his
25 medical history.

26 159. When Patient #6 regained consciousness after the
27 surgery, Patient #6 was given written post-surgical instructions

1 (which inter alia advised him to ignore any foul-smelling
2 discharge from his incision site) and prescriptions for an
3 antibiotic and pain killer. The post-surgical instructions did
4 not provide that Patient #6 needed to return to respondent's
5 office for further appointments.

6 160. In the month following the surgery, Patient #6 was
7 in a great deal of pain and barely able to walk. His incision
8 site exuded foul-smelling yellow pus. Patient #6 also noticed his
9 penis was neither wider nor longer following the surgery.

10 161. Patient #6 returned to respondent's office
11 approximately three times during the first month, to complain
12 about the utter lack of increase in penile size, the intense
13 pain, and the foul discharge. Respondent advised Patient #6 to
14 soak the incision in warm water and assured Patient #6 that he
15 eventually would see an increase in the size and length of his
16 penis. Notwithstanding the complaints of Patient #6, respondent
17 noted that the wound was healing well and that Patient #6 had an
18 excellent result. No one took the vital signs of Patient #6 at
19 any of these visits.

20 162. On or about June 23, 1994, Patient #6 returned to
21 respondent's office, again to complain about the lack of increase
22 in penile size. Respondent recommended that Patient #6 get a
23 "refill" of injected fat.

24 163. On or about June 24, 1994, Patient #6 sent to
25 respondent via certified mail a letter in which he recited some
26 aspects of his dissatisfaction. Respondent neglected to
27 incorporate this letter into the medical record of Patient #6.

1 164. On or about July 28, 1994, respondent performed
2 another fat injection procedure upon Patient #6, without
3 operation notes, pre-operative examination, or informed consent.

4 165. As a result of this "refill" procedure, Patient #6
5 developed lumps, grossly uneven fat distribution, and penile
6 deformities. When Patient #6 complained about the cosmetically
7 unacceptable result from the "refill" operation, respondent
8 recommended another refill, which Patient #6 declined.

9 166. Today, Patient #6 has a penis which is buried in
10 advanced pubic skin from an excessively large V-Y flap with "dog-
11 ears." He has a thick deposit of fat at the base of his penis,
12 and very little fat at the distal end. He has multiple fat
13 nodules throughout the penis. His penis is S-shaped, a condition
14 which did not exist prior to the penile enhancement surgery.
15 His penis is the same length as it was pre-operatively.

16 167. If he had been fully advised about the risks and
17 complications and experimental nature of the cosmetic penile
18 enhancement surgery, Patient #6 would not have consented to same.

19 168. The only photographs or measurements respondent
20 took of Patient #6 occurred on the date of the penile enhancement
21 surgery.

22

23 Causes for License Discipline

24 169. By virtue of the facts set forth above, respondent
25 was grossly negligent in his diagnosis, care, and treatment of
26 Patient #6. Gross negligence is unprofessional conduct under B&P
27 § 2234(b). Such unprofessional conduct constitutes grounds to

1 impose discipline upon respondent's Physician's and Surgeon's
2 Certificate pursuant to B&P §§ 2234, 2220.

3 170. By virtue of the facts set forth above, respondent
4 engaged in repeated acts of negligence in his diagnosis, care,
5 and treatment of Patient #6. Repeated acts of negligence are
6 unprofessional conduct under B&P § 2234(c). Such unprofessional
7 conduct constitutes grounds to impose discipline upon
8 respondent's Physician's and Surgeon's Certificate pursuant to
9 B&P §§ 2234, 2220.

10 171. By virtue of the facts set forth above, respondent
11 was incompetent in his diagnosis, care, and treatment of Patient
12 #6. Incompetence is unprofessional conduct under B&P § 2234(d).
13 Such unprofessional conduct constitutes grounds to impose
14 discipline upon respondent's Physician's and Surgeon's
15 Certificate pursuant to B&P §§ 2234, 2220.

16 172. By virtue of the facts set forth above, respondent
17 engaged in dishonest and corrupt acts in connection with his
18 marketing scheme, advertising, informed consent, diagnosis, care,
19 and treatment of Patient #6. Dishonest and corrupt acts are
20 unprofessional conduct under B&P § 2234(e). Such unprofessional
21 conduct constitutes grounds to impose discipline upon
22 respondent's Physician's and Surgeon's Certificate pursuant to
23 B&P §§ 2234, 2220.

24 173. By virtue of the facts set forth above,
25 respondent's false statements in his marketing scheme,
26 advertising, informed consent document, and chart entries re:
27 Patient #6 constitute unprofessional conduct under B&P § 2261.

1 would increase the length of the penis of Patient #7 by at least
2 1" and perhaps as much as 3". The young man described the
3 lengthening operation as simple surgery in which a small incision
4 was made on the abdomen. The young man indicated that the
5 lengthening and widening procedures have been performed by
6 respondent thousands of times without a single complication or
7 complaint, that respondent was the acknowledged leader in the
8 United States in that type of surgery, and that most people
9 return to work the following day. The young man also provided
10 Patient #7 with a one-page flyer further advertising respondent's
11 surgery which stated, inter alia, that "With the advance [sic]
12 techniques perfected by Dr. Rosenstein, most men achieve 2" to
13 over 3" in additional length."

14 178. Patient #7 made an appointment to have both penile
15 lengthening and widening surgery performed on June 29, 1994 in
16 respondent's Culver City office.

17 179. On June 29, 1994, at the scheduled time, Patient
18 #7 went to respondent's office (the Men's Institute of Cosmetic
19 Surgery), located on Hughes Avenue in Culver City.

20 180. Upon his arrival at respondent's office, Patient
21 #7 decided he wanted only the penile lengthening surgery.
22 Patient #7 filled out a health history questionnaire and signed
23 two consent forms (including an eight-page-long penile surgery
24 consent form).

25 181. Patient #7 was shown a videotape about the sur-
26 gery. Shortly thereafter, respondent came into the room and met
27 Patient #7 for the first time. Respondent looked quickly at the

1 genitalia of Patient #7. This was the full extent of the pre-
2 operative examination. Respondent described the V-Y incision
3 used for the penile lengthening; this was the first time Patient
4 #7 was told that the incision would be more than a small one.
5 Respondent explained that the increase in penile length would be
6 approximately the same as the Y-aspect of the incision, i.e.,
7 approximately 2". Respondent left the room shortly thereafter,
8 and Patient #7 was taken to the operating room.

9 182. Patient #7 then underwent surgery for penile
10 lengthening, with general anesthesia. Respondent made very few
11 notes from this surgery.

12 183. Prior to the commencement of the surgery, no one
13 advised Patient #7 of any of the following:

14 A. Common complications or phenomena involving
15 fat injections include these-- a great deal of injected fat can
16 be lost; injected fat can become encapsulated and/or reabsorbed
17 and/or create scar tissue, any or all of which can cause a lumpy,
18 bumpy appearance, substantial unevenness, or crookedness; repeat
19 fat injections are frequently required; injected fat can cause
20 the loose penile skin to fold over and create what appears to be
21 a [new] foreskin (possibly necessitating re-circumcision); the
22 injecting of fat into the penis in an investigational or
23 experimental, controversial procedure for which there is no
24 verified, published, peer-reviewed data;

25 B. Common complications or phenomena involving
26 penile lengthening include these-- the severed suspensory liga-
27 ment can heal so that the penis is shorter after the operation;

1 the penis only looks longer, without any increase in the length
2 of the "usable" aspect of the penis; there probably will be no
3 increase in length upon erection; the severing of suspensory
4 ligament can cause a loss of penile stability during erection,
5 with loss of some elevation upon erection; the V-Y incision can
6 cause hairy skin to cover the newly extended portion of the
7 penile shaft; the V-Y incision can create a fleshy lump at the
8 base of the abdomen and/or at the base of the penis; the
9 severing of the suspensory ligament for the cosmetic lengthening
10 of the penis is an investigational or experimental, controversial
11 procedure for which there is no verified, published, peer-
12 reviewed data.

13 184. Prior to the commencement of the surgery, no one
14 gave Patient #7 any counselling about his reasons for having the
15 surgery or about the advisability of having the cosmetic penile
16 enhancement procedures performed.

17 185. Prior to the commencement of the surgery, other
18 than the brief examination of his genitalia, Patient #7 did not
19 receive a physical examination, and no one discussed with him his
20 extensive medical history.

21 186. When Patient #7 regained consciousness after the
22 surgery, Patient #7 was given post-surgical instructions and
23 prescriptions for an antibiotic and pain killer. The post-
24 surgical instructions did not provide that Patient #7 needed to
25 return to respondent's office for further appointments.

26 187. In the weeks following the surgery, Patient #7 was
27 in a great deal of pain. He was unable to sit for more than an

1 hour at a time (which greatly interfered with his ability to
2 work). Patient #7 also noticed that his penis was the same
3 length as it was prior to the surgery (notwithstanding
4 respondent's chart note that the penis size increased from 3.5"
5 to 5.6"), but that he now had a big fleshy lump at the base of
6 his penis. Patient #7 advised respondent of this by telephone
7 and by letter, with film enclosed. (Said letter and photos were
8 not incorporated into the medical record.) When Patient #7
9 telephoned respondent after sending this letter, respondent only
10 told him that "it was a beautiful surgery" and that "it will heal
11 in a few weeks."

12 188. About three months after the surgery, Patient #7
13 sent respondent another letter, with photos, complaining about
14 the lack of length gain, plus cosmetically unacceptable result
15 involving changes in the hairline, the position of the penis vis-
16 a-vis the abdomen, and the concavity of the abdomen and pubic
17 region. Patient #7 also noted pain, scarring, and changes in his
18 testicles. Neither the letter nor accompanying photos were incor-
19 porated into the medical record of Patient #7. In reply, respon-
20 dent recommended (1) fat injections, or (2) a flap reversal.

21 189. Patient #7 ultimately agreed to a full flap
22 reversal, which was performed under general anesthesia on
23 February 24, 1995. Patient #7 did not receive a pre-operative
24 exam or informed consent prior to this procedure.

25 190. Upon removing his bandages, Patient #7 realized
26 that the flap reversal was only a partial one and that many of
27 the same cosmetic problems continued to exist. On or about March

1 15, 1995, Patient #7 wrote respondent a letter (photos enclosed)
2 to describe the problems. Notwithstanding this correspondence,
3 respondent noted in the patient's chart that the patient was
4 close to the desired result.

5 191. As on September 1995, Patient #7 still had a bulky
6 hairy deformity at the base of his penis. Patient #7 has sought
7 assistance from another urologist in attempt to resolve this
8 problem.

9 192. If he had been fully advised about the risks and
10 complications and experimental nature of the cosmetic penile
11 enhancement surgery, Patient #7 would not have consented to same.

12 193. The only photographs or measurements respondent
13 took of Patient #7 occurred on the date of the penile enhancement
14 surgery.

15

16 Causes for License Discipline

17 194. By virtue of the facts set forth above, respondent
18 was grossly negligent in his diagnosis, care, and treatment of
19 Patient #7. Gross negligence is unprofessional conduct under B&P
20 § 2234(b). Such unprofessional conduct constitutes grounds to
21 impose discipline upon respondent's Physician's and Surgeon's
22 Certificate pursuant to B&P §§ 2234, 2220.

23 195. By virtue of the facts set forth above, respondent
24 engaged in repeated acts of negligence in his diagnosis, care,
25 and treatment of Patient #7. Repeated acts of negligence are
26 unprofessional conduct under B&P § 2234(c). Such unprofessional
27 conduct constitutes grounds to impose discipline upon

1 respondent's Physician's and Surgeon's Certificate pursuant to
2 B&P §§ 2234, 2220.

3 196. By virtue of the facts set forth above, respondent
4 was incompetent in his diagnosis, care, and treatment of Patient
5 #7. Incompetence is unprofessional conduct under B&P § 2234(d).
6 Such unprofessional conduct constitutes grounds to impose
7 discipline upon respondent's Physician's and Surgeon's
8 Certificate pursuant to B&P §§ 2234, 2220.

9 197. By virtue of the facts set forth above, respondent
10 engaged in dishonest and corrupt acts in connection with his
11 marketing scheme, advertising, informed consent, diagnosis, care,
12 and treatment of Patient #7. Dishonest and corrupt acts are
13 unprofessional conduct under B&P § 2234(e). Such unprofessional
14 conduct constitutes grounds to impose discipline upon
15 respondent's Physician's and Surgeon's Certificate pursuant to
16 B&P §§ 2234, 2220.

17 198. By virtue of the facts set forth above,
18 respondent's false statements in his marketing scheme,
19 advertising, informed consent document, and chart entries re:
20 Patient #7 constitute unprofessional conduct under B&P § 2261.
21 Such unprofessional conduct constitutes grounds to impose
22 discipline upon respondent's Physician's and Surgeon's
23 Certificate pursuant to B&P §§ 2234, 2220.

24 199. By virtue of the facts set forth above,
25 respondent's false statements in the medical record of Patient #7
26 constitute unprofessional conduct under B&P § 2262. Such
27 unprofessional conduct constitutes grounds to impose discipline

1 upon respondent's Physician's and Surgeon's Certificate pursuant
2 to B&P §§ 2234, 2220.

3

4

VII. FALSE ADVERTISING

5 200. Beginning in or before 1993, and continuing
6 throughout the present, respondent has advertised his cosmetic
7 penile enhancement surgery in numerous newspapers and magazines
8 which are in circulation throughout the United States and
9 elsewhere.

10 201. Beginning in or before 1993, and continuing
11 throughout the present, respondent has advertised his cosmetic
12 penile enhancement surgery through radio advertisements and the
13 use of television "infomercials" which are aired throughout the
14 United States and elsewhere.

15 202. Said advertisements have contained numerous false
16 and/or misleading representations, as further described below.

17 203. In some of said advertisements, respondent has
18 made false and/or misleading claims regarding changes in size
19 which patients can expect from respondent's cosmetic penile
20 enhancement surgery, to wit:

21 A. Some of respondent's advertisements have
22 stated that most patients' penises will double in size or will
23 appear to double in size.

24 B. Some of respondent's advertisements, via the
25 use of two different rectangles, side-by-side, have stated,
26 expressly or impliedly, that patients penises will become 2" or
27 more inches longer and up to 50% wider in diameter.

1 C. None of respondent's advertisements state
2 that surgery-based changes in size will not necessarily be
3 permanent changes.

4 204. In some of said advertisements, respondent has
5 made false and/or misleading claims that prospective surgery
6 patients may have a free twenty minute consultation, impliedly
7 with respondent or a knowledgeable health care provider.
8 Respondent has not stated that the "consultation" is a sales
9 presentation with a commission-earning sales person who is not a
10 health care provider or that consultations with respondent cost
11 \$200.00.

12 205. In some of said advertising, respondent has made
13 false and/or misleading claims that he is the leading specialist
14 in the field of cosmetic penile enhancement or penile surgery.

15 206. In interviews with reporters, respondent has made
16 false and misleading claims about cosmetic penile enhancement
17 surgery and about his medical practice.

18 207. Although respondent has been given the opportunity
19 to provide data in support of his claims to various peer
20 organizations, he has declined to provide appropriate verified
21 data. In the absence of said data, both urological and plastic
22 surgical societies have issued cautionary statements about the
23 performance of cosmetic penile enhancement surgery.

24

25 Causes for License Discipline

26 208. By virtue of the facts set forth above, respondent
27 has advertised in violation of B&P § 17500. Advertising in

1 violation of B&P § 17500 is unprofessional conduct under B&P §
2 2271. Such unprofessional conduct constitutes grounds to impose
3 discipline upon respondent's Physician's and Surgeon's
4 Certificate pursuant to B&P §§ 2234, 2220.

5 209. By virtue of the facts set forth above, respondent
6 has engaged in false and misleading advertising which
7 misrepresents facts, and/or fails to disclose material facts,
8 and/or creates false or unjustified expectations of favorable
9 results, and/or contains other representations or implications
10 that will cause ordinarily prudent persons to misunderstand and
11 be deceived, in violation of B&P § 651. Violations of B&P § 651
12 are unprofessional conduct under B&P § 652. Such unprofessional
13 conduct constitutes grounds to impose discipline upon
14 respondent's Physician's and Surgeon's Certificate pursuant to
15 B&P §§ 2234, 2220.

16 210. By virtue of the facts set forth above,
17 respondent's false advertising constitutes dishonest and corrupt
18 acts. Dishonest and corrupt acts are unprofessional conduct
19 under B&P § 2234(e). Such unprofessional conduct constitutes
20 grounds to impose discipline upon respondent's Physician's and
21 Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

22 211. By virtue of the facts set forth above, respon-
23 dent's false advertising constitutes false statements in docu-
24 ments related to the practice of medicine, to wit, unprofessional
25 conduct under B&P § 2261. Such unprofessional conduct constit-
26 utes grounds to impose discipline upon respondent's Physician's
27 and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

VIII. ILLEGAL USE OF SALES STAFF

1
2 212. Beginning in or before 1993, and continuing
3 through the present, respondent has established and maintained
4 various offices throughout the United States. With the exception
5 of respondent's Culver City office, neither respondent nor any
6 other health care provider sees patients or provides medical care
7 at these other offices. Said other offices are "sales offices"
8 (except the Century City office, which has been designated as the
9 "marketing headquarters").

10 213. Working at said sales offices are sales personnel
11 who are not health care providers of any sort.

12 214. Sales personnel are employed to "sell"
13 respondent's penile enhancement surgery to persons who make
14 telephone inquiries in response to respondent's advertisements.
15 Said personnel utilize a variety of sales devices including but
16 not limited to scripts, unverified data for expected dimensions
17 of penile enlargement, "before" and "after" photos which
18 misrepresent the surgical results which can reasonably be
19 expected, and other untrue or misleading statements.

20 215. Said sales personnel are paid on a commission
21 basis.

22
23 Causes for License Discipline

24 216. By virtue of the facts set forth above, respondent
25 has employed runners, cappers, steerers, or other persons to
26 procure patients, which is unprofessional conduct under B&P §
27 2273. Such unprofessional conduct constitutes grounds to impose

1 discipline upon respondent's Physician's and Surgeon's
2 Certificate pursuant to B&P §§ 2234, 2220.

3 217. By virtue of the facts set forth above, respondent
4 has offered and/or paid commissions for the referral or
5 procurement of patients, in violation of B&P § 650. Violations
6 of B&P § 650 are unprofessional conduct under B&P § 652. Such
7 unprofessional conduct constitutes grounds to impose discipline
8 upon respondent's Physician's and Surgeon's Certificate pursuant
9 to B&P §§ 2234, 2220.

10 218. By virtue of the facts set forth above,
11 respondent's use of a high-pressure sales staff constitutes
12 dishonest and corrupt acts. Dishonest and corrupt acts are
13 unprofessional conduct under B&P § 2234(e). Such unprofessional
14 conduct constitutes grounds to impose discipline upon
15 respondent's Physician's and Surgeon's Certificate pursuant to
16 B&P §§ 2234, 2220.

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18 IX. DECEPTIVE MARKETING SCHEME

19 219. Beginning in or before 1993, and continuing
20 through the present, respondent has created and employed a
21 marketing scheme which incorporates, inter alia, advertising
22 throughout the United States in various media, the use of a high-
23 pressure sales staff, and a pre-operative videotape. These
24 facets of the marketing scheme contain false information about
25 respondent and penile enhancement surgery, and/or conceal
26 material information about same. Patients do receive an
27 "informed consent" document which (1) contains information which

1 is different than or contrary to information previously given
2 patients, (2) is not shown the patient until shortly before
3 surgery, after payment has been tendered and recuperative
4 arrangements have been made, (3) is not explained to the patient,
5 (4) omits material information about the risks of, benefits of,
6 and alternatives to penile enhancement surgery, and (5) contains
7 false information about the risks of, benefits of, and
8 alternatives to penile enhancement surgery.

9 220. Respondent buttresses his deceptive marketing
10 scheme with boilerplate pre-surgical consultation documents which
11 falsely state that patients have received pre-operative exams and
12 pre-operative counselling.

13

14 Causes for License Discipline

15 221. By virtue of the facts set forth above, respondent
16 has engaged in gross negligence, which is unprofessional conduct
17 under B&P § 2234(b). Such unprofessional conduct constitutes
18 grounds to impose discipline upon respondent's Physician's and
19 Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

20 222. By virtue of the facts set forth above, respondent
21 has engaged in dishonest and corrupt acts. Dishonest and corrupt
22 acts are unprofessional conduct under B&P § 2234(e). Such
23 unprofessional conduct constitutes grounds to impose discipline
24 upon respondent's Physician's and Surgeon's Certificate pursuant
25 to B&P §§ 2234, 2220.

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X. UNAPPROVED FICTITIOUS NAME PERMIT

223. From on or before 1993, and continuing through 1995, respondent has advertised his medical practice under the fictitious name of "Men's Institute of Cosmetic Surgery" and has done business under said fictitious name. The Board has no record of ever having issued a fictitious name permit for the "Men's Institute of Cosmetic Surgery."

224. From on or before 1994, and continuing throughout January 5, 1995, respondent has advertised his medical practice under the fictitious name of "Rosenstein Medical Group" and has done business under said fictitious name. The Board had not issued a fictitious name permit for the "Rosenstein Medical Group" prior to January 6, 1995.

Causes for License Discipline

225. By virtue of the facts set forth above, respondent's use of unapproved fictitious business names is unprofessional conduct under B&P § 2285. Such unprofessional conduct constitutes grounds to impose discipline upon respondent's Physician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

XI. GENERAL PATIENT CARE CONSIDERATIONS

226. Respondent has failed to employ basic sterility practices during surgery. Among other things, intravenous tubing is reused, general anesthesia breathing apparatus is reused, and contaminated suturing needles are not replaced.

1 227. Respondent does failed or refused to document even
2 the most basic details of the surgery he performs, and has
3 prevented physicians under his supervision from doing so as well.
4 He thereby (a) insulates himself (and those under his
5 supervision) from meaningful scrutiny of surgical abilities and
6 medical judgment, and (b) impedes the ability of subsequent
7 treating practitioners to determine the source of, or treat,
8 complications of respondent's penile enhancement surgery.

9

10 Causes for License Discipline

11 228. By virtue of the facts set forth above,
12 respondent's failure to assure sterile protocol is gross
13 negligence. Gross negligence is unprofessional conduct under B&P
14 § 2223(b). Such unprofessional conduct constitutes grounds to
15 impose discipline upon respondent's Physician's and Surgeon's
16 Certificate pursuant to B&P §§ 2234, 2220.

17 229. By virtue of the facts set forth above,
18 respondent's failure to assure sterile protocol constitutes
19 repeated acts of negligence. Repeated negligent acts are
20 unprofessional conduct under B&P § 2223(c). Such unprofessional
21 conduct constitutes grounds to impose discipline upon
22 respondent's Physician's and Surgeon's Certificate pursuant to
23 B&P §§ 2234, 2220.

24 230. By virtue of the facts set forth above,
25 respondent's failure to assure sterile protocol is incompetence,
26 which is unprofessional conduct under B&P § 2223(d). Such
27 unprofessional conduct constitutes grounds to impose discipline

1 upon respondent's Physician's and Surgeon's Certificate pursuant
2 to B&P §§ 2234, 2220.

3 231. By virtue of the facts set forth above,
4 respondent's failure to document surgical procedures is gross
5 negligence. Gross negligence is unprofessional conduct under B&P
6 § 2223(b). Such unprofessional conduct constitutes grounds to
7 impose discipline upon respondent's Physician's and Surgeon's
8 Certificate pursuant to B&P §§ 2234, 2220.

9 232. By virtue of the facts set forth above,
10 respondent's failure to document surgical procedures constitutes
11 repeated acts of negligence. Repeated negligent acts are
12 unprofessional conduct under B&P § 2223(c). Such unprofessional
13 conduct constitutes grounds to impose discipline upon
14 respondent's Physician's and Surgeon's Certificate pursuant to
15 B&P §§ 2234, 2220.

16 233. By virtue of the facts set forth above,
17 respondent's failure to document surgical procedures is
18 incompetence, which is unprofessional conduct under B&P §
19 2223(d). Such unprofessional conduct constitutes grounds to
20 impose discipline upon respondent's Physician's and Surgeon's
21 Certificate pursuant to B&P §§ 2234, 2220.

22

23 XII. CIRCUMSTANCES IN AGGRAVATION OF UNPROFESSIONAL CONDUCT

24 234. Respondent performs his penile enhancement surgery
25 in his office, rather than in a hospital. Accordingly, he is not
26 subject to any oversight by a peer-review committee,
27 institutional review board, or other committee responsible for

1 review of protocols and the safety or efficacy of experimental or
2 investigational surgery.

3 235. Respondent has claimed that he performs about 100
4 to 150 cosmetic penile enhancement surgeries every month.

5 236. Many of respondent's patients are suffering
6 complications, many of which may be irreversible. Because of the
7 embarrassing and highly personal nature of this surgery, however,
8 a large percentage of victims are not willing to come forward for
9 purposes of medical malpractice litigation or the filing of
10 complaints with government agencies. Some of them are, however,
11 seeking further medical care from other physicians, to the extent
12 that they can afford same.

13 237. Notwithstanding the very personal and embarrassing
14 nature of this surgery, numerous patients have been sufficiently
15 outraged with the results of the same as to institute lawsuits
16 against respondent, or otherwise file complaints against
17 respondent. As of January 1, 1996, in connection with cosmetic
18 penile enhancement surgery alone, there were at least 37 medical
19 malpractice lawsuits on file against respondent, plus a number of
20 notices of intent to file lawsuits.⁵⁷ The lawsuits cited, inter
21 alia, negligence in the performance of cosmetic penile
22

23 5. Section 364 of the Code of Civil Procedure requires,
24 prior to filing a medical malpractice lawsuit, a Notice of Intent
25 must be served upon the physicians who shall be named as
26 defendants in such a lawsuit, Effective January 1, 1994, Section
27 364.1 requires that a copy of the notice of intent must be sent
to the Medical Board. Notwithstanding this new provision of law,
and based upon the existing lawsuits, the Medical Board is
receiving copies of the notice of intent in fewer than half of
such cases.

1 enhancement surgery and fraudulent inducement. One such lawsuit
2 even alleges wrongful death.

3 238. The cosmetic penile enhancement malpractice
4 litigation is so voluminous that respondent's civil litigation
5 counsel has attempted to move all such cases to the Los Angeles
6 Superior Court, West District. Currently, in all such cases
7 pending before said court, all discovery has been stayed pending
8 motions for the consolidation of litigation for purposes of
9 discovery, consolidation of litigation for purposes of trial, and
10 creation of a class of plaintiffs.

11

12

OTHER MATTERS

13

239. B&P § 125.3 provides in pertinent part that:

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"(a) Except as provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department ... the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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"(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative

1 and enforcement costs up to the date of the hearing, inclu-
2 ding, but not limited to, charges imposed by the Attorney
3 General.

4 "(d) The administrative law judge shall make a
5 proposed finding of the amount of reasonable costs of inves-
6 tigation and prosecution of the case when requested pursuant
7 to subdivision (a). The finding of the administrative law
8 judge with regard to costs shall not be reviewable by the
9 board to increase the cost award. The board may reduce or
10 eliminate the cost award, or remand to the administrative
11 law judge where the proposed decision fails to make a
12 finding on costs requested pursuant to subdivision (a)...."

13 14 PRAYER

15 240. For the reasons set forth in paragraphs 1 through
16 239, inclusive, of this accusation, good cause exists to impose
17 discipline upon the Physician's and Surgeon's Certificate and
18 Fictitious Name Permit issued to respondent.

19
20 WHEREFORE, complainant requests that the Division
21 issue a decision:

22 1. Revoking or suspending Physician's and Surgeon's
23 Certificate No. G-28005, heretofore issued to respondent Melvyn
24 Rosenstein, M.D.;

25 2. Imposing a civil penalty of \$500.00 for each of
26 respondent's violations of B&P § 2262;

1 3. Revoking Fictitious Name Permit No. 22466,
2 heretofore issued to Melvyn Rosenstein, M.D., dba Rosenstein
3 Medical Group;

4 4. Ordering respondent to pay the Division the actual
5 and reasonable costs of the investigation and enforcement of this
6 case;

7 5. Taking such other and further action as the
8 Division deems proper.

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10 DATED: 23 February 1990.

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41 RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

shall, and (59- 995e rev)