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Attorneys for Complainant

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

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

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

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

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

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

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

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

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

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

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

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

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

licensure and has no force and effect in any other context.

11. All admissions and recitals contained in this stipulation are made solely for the purpose of settlement in this proceeding and for any other proceedings in which the Division of Medical Quality, Medical Board of California, or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceedings. Furthermore, this stipulation shall have no collateral estoppel or *res judicata* effect on any other criminal or civil proceeding.

12. In order to provide for continuity of patient care for respondent's former patients, respondent agrees that upon receipt of a request from a former patient he shall provide copies of any medical records in his possession pursuant to California Health and Safety Code section 123110.

CONTINGENCY

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

ACCEPTANCE

I, Melvyn Rosenstein, M.D., have carefully read the above stipulation and enter into it freely and voluntarily with the advice of counsel, and with full knowledge of its force and effect, do hereby surrender my Physician's and Surgeon's Certificate, No. G-28005, and Fictitious Name Permit No. 22466 to the Division for its formal acceptance. By signing this stipulation to surrender my license, I recognize that upon its formal

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

DATED: July 12, 1996.

MELVYN ROSENSTEIN, M.D.
Respondent

I concur in the stipulation.

DATED: July 10, 1996.

JAMES R. LAHANA
Attorney for Respondent

DATED: July 12, 1996.

THOMAS P. BROWN, IV
Attorney for Respondent

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

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)

DANIEL E. LUNGREN, Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MELVYN ROSENSTEIN, M.D.** 3831 Hughes Avenue Culver City, California 90230 Physician's and Surgeon's Certificate No. G-28005, and **MELVYN S. ROSENSTEIN, M.D., dba ROSENSTEIN MEDICAL GROUP** 3831 Hughes Avenue Culver City, California 90230 Fictitious Name Permit No. 22466, Respondent.	MBC Case No. 06-94-35639 OAH File No. L-9601215 **ACCUSATION**

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

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PARTIES

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

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

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

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

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

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

JURISDICTION AND LEGAL AUTHORITY

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

7. B&P § 2220 requires that the Division of Medical Quality of the Medical Board of California shall enforce and administer the provisions of Article 12[1] of the Medical Practice Act[2] as to all holders of physician's and surgeon's certificates.

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

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

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

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1. Business and Professions Code sections 2220-2319.

2. Business and Professions Code section 2000 et seq.

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

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

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

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

11. B&P § 2262 states that:

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

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

12. B&P § 2271 declares that, "Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

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 ..."

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

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

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

"(1) Contains a misrepresentation of fact.

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

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

...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

"(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

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

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

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

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

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

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

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

...

"(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

"(17) Any other item of factual information that is not false, fraudulent, misleading or likely to deceive..."

15. B&P § 652 states in pertinent part that, "Violation of this article[3] in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his license by the board by whom he is licensed, or if a license has been issued in connection with a place of business then suspension or revocation of the place of business in connection with which the violation occurs...."

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

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

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

otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom these patients clients or customers are referred is unlawful..."

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

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

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

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

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

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

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

...

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

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

OVERVIEW OF CASE

22. Beginning in or before 1993, and continuing until on or after January 26, 1996, respondent has been advertising, offering, and performing medical services for the cosmetic lengthening and widening (aka "augmenting" or "girth enhancement") of men's penises, which procedures are collectively referred to herein as "cosmetic penile enhancement surgery" or "cosmetic penile enlargement surgery." Cosmetic penile enhancement is investigational or experimental surgery which is relatively new; there are no validated statistics regarding the efficacy, safety, or positive outcome of such procedures. In connection with his performance of cosmetic penile enhancement surgery and the offering of said services:

(a) respondent has engaged in false and misleading advertising about the benefits of cosmetic penile enhancement surgery and/or about his qualifications to perform same;

(b) respondent has employed a sales staff whose job it is to procure patients and who are paid on a commission basis;

(c) respondent has failed to provide his patients complete and truthful disclosure and/or appropriate pre-operative counselling about the details and risks and complications of the surgical procedures which he advertised, offered, and/or intended to perform;

(d) through a marketing scheme incorporating false advertising (nationwide), a high-pressure sales staff, and other means, respondent actively has concealed material information about penile enhancement surgery from his (prospective) patients;

(e) respondent has neglected, pre-operatively, to ascertain patients' medical histories properly and/or to conduct appropriate physical examinations of his patients;

(f) respondent has failed to abide by practices regarding sterility in the operating room: he has inter alia reused intravenous fluid bottles and tubing, as well as anesthesia squeeze bags and tubing, and he does not replace contaminated suture needles;

(g) respondent has failed to make sufficient medical records for his cosmetic penile enhancement surgery patients and has neglected to document sufficiently the details of cosmetic penile enhancement surgeries;

(h) respondent has neglected to provide appropriate and necessary post-operative care for his patients;

(i) respondent has made false and/or misleading entries in patients' medical records regarding (1) pre-operative histories and physical exams, (2) pre-operative counselling, (3) surgical outcomes, (4) the complications and problems suffered in connection with penile lengthening and/or widening surgery, and (5) dates relevant to medical treatment;

(j) respondent has been intoxicated while in attendance upon patients;

(k) respondent has used unapproved fictitious business names.

The details of these allegations are set forth with greater particularity below.

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GROUNDS FOR LICENSE DISCIPLINE

I. IN RE: PATIENT #1

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

24. In or around mid-to-late 1993 through early 1994, Patient #1 heard a radio program and saw newspaper advertisements promoting cosmetic penile enhancement surgery by respondent via the Men's Institute of Cosmetic Surgery. During the radio program, respondent stated that he performed surgical procedures which lengthen and widen men's penises in unprovable dimensions. The newspaper advertisements also indicated same.

25. In late January 1994 or early February 1994, Patient #1 called a local telephone number set forth in respondent's newspaper ad and was given an appointment for a "free consultation" in respondent's San Diego office. In or around early-to-mid February 1994, Patient #1 appeared at the scheduled appointment and met with respondent's representative, a male who appeared to be in his 20's. This young man said the operation was simple procedure with a short recovery time and which posed only one possible complication. The young man showed Patient #1 some "before-and-after" photographs in which the depicted penis was both longer and wider after the surgery. None of the "after" photos showed a deformed penis. The young man stated that Patient #1 could expect results consistent with the photos and indicated that length increases range from ½" to 3" and width increases average 30%.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Causes for License Discipline

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

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

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

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

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

52. By virtue of the facts set forth above, respondent's false statements in the medical record of Patient #1 constitute unprofessional conduct under B&P § 2262. Such unprofessional conduct constitutes grounds to impose discipline upon respondent's Physician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

II. IN RE PATIENT #2

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

54. In or around mid-to-late 1993, Patient #2 saw a television news story and saw newspaper advertisements promoting cosmetic penile enhancement surgery by respondent via the Men's Institute of Cosmetic Surgery. During the television news story, respondent stated that he performed surgical procedures which lengthen and widen men's penises. The newspaper advertisements stated that "Most patients will appear to double in size" or "Most patients WILL double in size" and that "Dr. Melvyn Rosenstein is nationally recognized as the leading specialist throughout the U.S."

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

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

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

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

enlargement surgery.

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

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

61. Patient #2 asked respondent about the length increase he could expect from the surgery. Patient #2 expressed confusion over respondent's ads claiming a doubling in size, as opposed to respondent's representative in Newport Beach citing an increase of at least 1½", as opposed to the video's reference to a minimum increase of ½". Patient #2 asked respondent to resolve this discrepancy by stating the true minimum increase in length he could expect. Patient #2 specifically told respondent that he would not be happy with just a ½" increase. Respondent replied by stating "Don't worry. You will be happy."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77. About four months after the surgery, the condition of the penis of Patient #2 was as follows: (1) it was still partially swollen; (2) it was bent at an angle of about 45 degrees, about 1¾" from the tip; (3) it still had the big bubble on the penile shaft; (4) it had the two aforementioned nodules, each over one centimeter in diameter, on the shaft of the penis;

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

78. About four or five months after the surgery (after the swelling subsided), Patient #2 noticed that his penis, when erect, was about ½" shorter than before the surgery.

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

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

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

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

correspondence from Patient #2, into the medical record.

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

84. Today, the length of Patient #2's penis, when erect, is still ½" shorter than before the surgery, with another ½" of the erect length as unengorged soft tissue. The flaccid length is the same as before the surgery. The width is basically the same as before the surgery, except where the two lumps are - but that is asymmetrical. The bend in his penis is more noticeable upon erection than in the flaccid state. The penis looks somewhat like a crook neck squash.

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

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

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

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Causes for License Discipline

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

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

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

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

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

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

III. IN RE: PATIENT #3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

return to respondent's office for further appointments.

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

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

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

do with that? We sell it to cocksuckers for chewing gum!" Patient #3 was appalled and felt uncomfortable returning to respondent for further treatment.

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

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

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

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

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

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

Causes for License Discipline

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

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

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

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

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

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

IV. IN RE PATIENT #5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138. In or around August 1994, Patient #5 returned to respondent's office, complaining of a loss of penile length and of impotence.[4] Respondent recommended that Patient #5 undergo scar revision surgery to remove some of the scar tissue resulting from the poor healing of the incision.

139. Patient #5 eventually agreed to undergo said surgery by respondent. This scar revision surgery left the penis of Patient #5 another ½" shorter (now a total of 1" shorter than his pre-surgical length). Respondent made no operative note of this surgery, and no informed consent was given. Respondent did not conduct a pre-operative examination of Patient #5 prior to the procedure.

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

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

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

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

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

Causes for License Discipline

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

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

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

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

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

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

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

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V. IN RE: PATIENT #6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Causes for License Discipline

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

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

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

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

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

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

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

174. By virtue of the facts set forth above, respondent's false statements in the medical record of Patient #6 constitute unprofessional conduct under B&P § 2262. Such unprofessional conduct constitutes grounds to impose discipline upon respondent's Physician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

VI. IN RE: PATIENT #7

175. "Patient #7" is an adult male individual who at all times relevant herein resided in the State of California.

176. In or around June 1994, Patient #7 noticed a newspaper advertisement(s) promoting penile enhancement surgery by Melvyn Rosenstein, M.D., and the Men's Institute of Cosmetic Surgery. The advertisements indicated, inter alia, "Most patients will double in size."

177. In or around June 1994, Patient #7 called the San Francisco-area telephone number set forth in respondent's newspaper ad and was given an appointment for a free consultation at respondent's San Francisco office. Several days later, Patient #7 appeared at the scheduled appointment and met with respondent's representative, a young male. The young man showed Patient #7 pairs of "before-and-after" pictures in which the depicted penis was both longer and wider after the surgery, without any penile deformity. The young man said that respondent

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

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

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

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

181. Patient #7 was shown a videotape about the surgery. Shortly thereafter, respondent came into the room and met Patient #7 for the first time. Respondent looked quickly at the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Causes for License Discipline

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

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

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

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

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

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

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

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

VII. FALSE ADVERTISING

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

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

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

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

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

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

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

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

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

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

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

Causes for License Discipline

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

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

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

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

211. By virtue of the facts set forth above, respondent's false advertising constitutes false statements in documents related to the practice of medicine, to wit, unprofessional conduct under B&P § 2261. Such unprofessional conduct constitutes grounds to impose discipline upon respondent's Physician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

VIII. ILLEGAL USE OF SALES STAFF

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

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

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

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

Causes for License Discipline

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

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

217. By virtue of the facts set forth above, respondent has offered and/or paid commissions for the referral or procurement of patients, in violation of B&P § 650. Violations of B&P § 650 are unprofessional conduct under B&P § 6.52. Such unprofessional conduct constitutes grounds to impose discipline upon respondent's Physician's and Surgeon's Certificate pursuant to B&P §§ 2234, 2220.

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

IX. DECEPTIVE MARKETING SCHEME

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

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

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

Causes for License Discipline

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

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

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

Causes for License Discipline

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

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

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

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

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

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

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

XII. CIRCUMSTANCES IN AGGRAVATION OF UNPROFESSIONAL CONDUCT

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

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

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

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

237. Notwithstanding the very personal and embarrassing nature of this surgery, numerous patients have been sufficiently outraged with the results of the same as to institute lawsuits against respondent, or otherwise file complaints against respondent. As of January 1, 1996, in connection with cosmetic penile enhancement surgery alone, there were at least 37 medical malpractice lawsuits on file against respondent, plus a number of notices of intent to file lawsuits.[5] The lawsuits cited, inter alia, negligence in the performance of cosmetic penile

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5. Section 364 of the Code of Civil Procedure requires, prior to filing a medical malpractice lawsuit, a Notice of Intent must be served upon the physicians who shall be named as defendants in such a lawsuit, Effective January 1, 1994, Section 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.

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

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

OTHER MATTERS

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

> "(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.
>
> ...
>
> "(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

and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

"(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a)...."

PRAYER

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

WHEREFORE, complainant requests that the Division issue a decision:

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

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

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

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

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

DATED: 23 February 1996.

RON JOSEPH
Executive Director
Medical Board of California
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Complainant

shell.acc (594, 995e rev)