

ENFORCEMENT ACTIONS RE

UNLICENSED CORPORATE PRACTICE OF MEDICINE

I. Summary of Law

California has a strong long-standing public policy against permitting lay persons to practice any of the medical arts or to exercise control over decisions made by healing arts practitioners. As such, California law prohibits any person from practicing medicine in this state without a valid certificate of licensure. (Bus. & Prof. Code section 2052.) This prohibition not only applies to lay individuals but, with limited exceptions, also to corporations and other artificial entities which have "no professional rights, privileges or powers" under this state's Medical Practice Act. (Bus. & Prof. Code section 2400.)

The bar to the corporate practice of medicine is essentially designed to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine. The prohibition against the corporate practice of medicine provides a fundamental protection against the public danger that medical care will be subject to commercial exploitation. It ensures that those persons who make decisions affecting, generally or indirectly, the provision of medical care: (1) understand the quality of care implications of those decisions; (2) possess the professional ethical obligation to place the patient's interests foremost; and (3) are subject to the full panoply of enforcement powers of the Medical Board of California, which is charged with the administration of the Medical Practice Act.

Consistent with these principles, it is well-settled that, with limited exceptions, a corporation may not engage in the practice of medicine, either directly or indirectly, by contracting with physicians or other health care professionals to provide health care services. A general business corporation may not engage physicians to provide medical services even if physicians operate as independent contractors and not as employees of corporation. A for-profit corporation violates the public policy against corporate practice when it exercises control over decisions made by healing arts practitioners, including sitting, improvements, furnishing, fixtures, inventory, supplies, design specifications for offices, financial aspects of the practice, choice of laboratory, and treatment decisions.

"Management services organizations," i.e. corporations that charge fees to select, schedule, secure, and pay for medical services ordered by physicians are often engaged in the unlawful corporate practice of medicine. Moreover, a physician who acts as a medical director of a lay-owned business is aiding and abetting the unlicensed practice of medicine (See Precedential Decision No. MBC-2007-01-Q, Medical Board of California, In the Matter of the Accusation Against Joseph F. Basile.)

A physician aids and abets the unlicensed practice of medicine when he works, whether as an employee OR as an independent contractor, for and at a medical clinic owned by unlicensed persons, even if the clinic holds a fictitious name permit issued by the Medical Board. The ban on the corporate practice of medicine generally precludes for-profit corporations—other than licensed medical corporations [and Knox-Keene HMOs]—from providing medical care through either salaried employees or independent contractors.

Furthermore, consistent with its protective goals, the prohibition upon the corporate practice of medicine has been interpreted broadly to encompass not only direct medical decisions, but "business" and "administrative" decisions which have medical implications as well. For example, the prospective purchase of a piece of radiological equipment could be impacted by business considerations (cost, gross billings to be generated, space and employee needs), medical considerations (type of equipment needed, scope of practice, skill levels required by operators of the equipment, medical ethics), or by an amalgam of factors emanating from both business and medical areas. The interfacing of these variables may also require medical training, experience, and judgment.

A contract under which a physician's compensation is tied to the number of patients he admits to a hospital is invalid as violative of Business and Professions Code section 650, prohibiting rebates for referrals.

II. Factors That Could Indicate Unlicensed Corporate Practice of Medicine

A. The doctors agreed to employment by and thereafter functioned as an "independent contractor" and/or as a "Supervising Physician" and/or as a "Medical Director" to a nonprofessional medical corporation, notwithstanding that the employing corporation's control over the operation of its medical clinics was such that the employing corporation, is consistently involved in the making of decisions which bear both directly and indirectly upon the practice of medicine in violation of both California statutory and case law designed to protect California consumers. Such control and decision making by the employing corporation, might include, but is not limited to, the following:

(1) Determining the type and quality of medical facilities, equipment, and supplies to be provided for its provision of medical services, and/or, in fact, providing only a license to the doctors to use the medical facilities of the employing corporation; and/or

(2) Hiring and firing of clerical and administrative personnel, setting fees for the provision of medical services, creating the billing procedures and receiving payment for medical services; and/or

(3) Notwithstanding any written language or agreements to the contrary, the hiring, firing, and payment of salaries to medical personnel including physicians and nurses; and/or

(4) Setting of the doctors' compensation based upon a flat percentage of gross receipts; and/or

(5) Subordinating the doctors' authority and/or medical decision making to the employing corporation personnel not licensed in California; and/or

(6) Lending the doctors' Medical and/or DEA License's to or otherwise allowing unlicensed individuals to purchase Drugs, Pharmaceuticals and Biologics using the doctors' Medical and/or DEA License; and/or

Enforcement Actions Re Unlicensed Corporate Practice Of Medicine – Contd.

(7) Restricting the doctors from ownership and/or control of original medical records, and, in fact, providing for unlicensed individuals or entities to maintain custody and control and transfer of patient medical records; and/or

(8) Restricting the doctors from providing “Med Spa” services at locations not owned by the employing corporation; and/or

(9) Restricting the doctors from hiring or soliciting certain employees or independent contractors; and/or

(10) Providing the doctors with malpractice insurance in coverage amounts and by companies chosen by the employing corporation; and/or

(11) Providing that the doctors’ contract (Management Services Agreement) can be assigned to any other party who acquires all or substantially all of the assets of the employing corporation and/or

(12) Restricting the doctors from voting, selling or transferring their ownership/shares in any professional corporation they might otherwise own, without the employing corporation’s permission; and/or

(13) Controlling the mode and content and contracts for advertising and website content

III. Existing Enforcement Options

A. Authority to Enjoin Corporate Unlicensed Practice And To Seek Civil Damages, Restitution, and Cost Recovery.

(1) Business and Professions Code, section 125.5. (Injunction against violation of provisions of the Business and Professions Code–TRO available, Bus. and Prof. Code, §§ 125.7 and 125.8.)

(2) Business and Professions Code, section 656. (Injunction against violations of Article 6 of Chapter 1 of Division 2 of the Business and Professions Code (Bus. & Prof. Code, §§ 650 et seq.) pertaining to unearned rebates, refunds, and discounts.)

(3) Business and Professions Code, section 2311. (Injunction against violations of the Medical Practice Act.)

(4) Business and Professions Code, section 17200. (Unfair competition.) (Case must be brought by the AG, the DA, or certain city attorneys and county counsels. (Bus. & Prof. Code, §§ 17204, 17204.5.) Injunctive relief, restitution, and civil penalties available. (Bus. & Prof. Code, §§ 17203, 17206.) Additional penalties if the acts are perpetrated against seniors or disabled persons. (Bus. & Prof. Code, § 17206.1.) If brought at the request of a Department of Consumer Affairs agency, investigative costs and attorneys’ fees are recoverable. (Bus. & Prof. Code, § 17206(e).)

Enforcement Actions Re Unlicensed Corporate Practice Of Medicine – Contd.

(5) Business and Professions Code, section 17500. (False and misleading advertising) (Case may be brought by the AG, the DA, city attorneys, and county counsels. (Bus. & Prof. Code, § 17535.) Injunctive relief, restitution, and civil penalties available. (Bus. & Prof. Code, §§ 17535, 17536.) If brought at the request of a Department of Consumer Affairs agency, investigative costs and attorneys' fees are recoverable. (Bus. & Prof. Code, § 17536(d).)

B. Disciplinary Action

(1) Disciplinary Action Against Participating Licensed Professions. (Bus. and Prof. Code, § 2234 et seq. (unprofessional conduct); 650 (unlawful rebates for referrals); 2264 (aiding and abetting unlicensed practice); 2285 (use of false or fictitious name without a permit); 2286 (Moscone-Knox violations).

C. Cite and Fine

(1) Cite and fine authority—potentially available against both licensed and unlicensed entities. (Title 16, Cal. Code Regs., §§ 1364.10, 1364.11, 1364.13.)

(a) Citable offenses include Business and Professions Code sections 119 (loan of license to another, etc.); 125 (conspiracy with unlicensed person); 650 (unlawful rebates and referrals); 2052 (unlicensed practice and aiding and abetting); 2054 (false use of M.D. or “doctor”); 2264 (aiding and abetting unlicensed practice); 2285 (false use of a fictitious name); 2286 (violations of Moscone-Knox); 17500 (false advertising).

(b) Fines can be from \$100 to \$2500, and up to \$5000 under certain circumstances. (Cal. Code Regs., § 1364.11, subd. (c).)

D. Referral for Criminal Prosecution

(1) Practicing medicine without a license and aiding and abetting the unlicensed practice of medicine are both criminal offenses. (Bus. and Prof. Code, § 2052.)

(2) False advertising is a crime. (Bus. and Prof. Code, § 17500.)

IV. Attachments

- A. Joseph F. Basile, M.D., Precedential Decision
- B. Excerpts from Accusation/Decision re William J. Wolfenden, M.D.
- C. Excerpts from Petition to Revoke Probation/Decision re Sasanka Mukerji, M.D.
- D. Excerpts from Civil Complaint For Preliminary and Permanent Injunction,
Virginia Siegel

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

In the Matter of the Accusation Against:)	
)	OAH No. N2002050521
)	
JOSEPH F. BASILE, M.D.)	MBC Case No. 03-2000-108170
)	
Physician's and Surgeon's)	PRECEDENTIAL DECISION
Certificate No. G 74601)	No. MBC-2007-01-Q
)	
Respondent.)	

DESIGNATION AS A PRECEDENTIAL DECISION

Pursuant to Government Code section 11425.60 and Title 16 CCR 1364.40, the Division of Medical Quality, Medical Board of California, hereby designates as precedential Decision No. MBC-2007-01-Q those sections listed below of the decision in the Matter of the Accusation Against Joseph F. Basile, M.D.

- 1) Factual Findings 1 and 2; the first sentence of Factual Finding 3; Factual Findings 4 and 5; and Factual Finding 6 except for the last two sentences.; and
- 2) Legal Conclusions 1 through 5.

This precedential designation shall be effective July 27, 2007.



Cesar A. Aristeiguieta,
President
Division of Medical Quality
Medical Board of California

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

In the Matter of the Accusation Against:

JOSEPH F. BASILE, M.D.
130 Coffee Road, Suite 7
Modesto, California 95355

Physician and Surgeon's
Certificate No. G 74601

Respondent.

Case No. 03-2000-108170

OAH No. N2002050521

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on May 24 through 27, and June 16, 2004, in Oakland, California.

Jose R. Guerrero, Deputy Attorney General, represented complainant.

Robert B. Zaro, Esq., represented Joseph F. Basile, M.D., who was present.

The case was submitted for decision on June 16, 2004.

FACTUAL FINDINGS

1. Complainant Ronald Joseph was formerly the Executive Director of the Medical Board of California (Board). The Accusation and First and Second Amended Accusations were issued by him in his official capacity.

2. On July 9, 1992, the Board issued Joseph F. Basile, M.D. (respondent) Physician and Surgeon's Certificate No. G 74601. The certificate was current at all times pertinent to this matter. It was due to expire on May 31, 2004, if not renewed. There has been no prior disciplinary action taken against this certificate.

3. The allegations against respondent arise from his involvement in and operation of a medical office called "The Vein & Cosmetic Enhancement Center" (VCEC).

* * * * *

4. Professional Background. Respondent attended Georgetown University School of Medicine, graduating in 1987. He completed a portion of his residency at Georgetown University before transferring to St. Francis Hospital, affiliated with the University of Connecticut. Respondent became board certified in general surgery in April 1996. Between 1992 and 1999 he was on the medical staff of Salinas Surgery Center in Salinas, California. He also associated with the Monterey Peninsula Surgery Center. He describes his work in Salinas as a “bread and butter general surgery practice” involving hernia repairs, gall bladder, blunt trauma, cancers of all sorts and gastrointestinal surgery. Respondent also served as the medical director of VCEC, a business wholly owned by his wife, Vina Basile. She is neither a physician nor a nurse and she holds no other health profession licenses. VCEC was located in Carmel. Respondent relocated his medical practice to Modesto, where he worked for a short time with the Stanislaus County Health Services Agency. Vina Basile remained behind and continued to work in the Carmel VCEC office for a period before that office was closed in March 2001. VCEC moved to Modesto and respondent continued there in his position as its medical director.

5. PhotoDerm Vasculight Machine. Much of this case revolves around the use of a medical device known as a PhotoDerm Vasculight machine. In 1998, respondent became interested in new equipment that could be used for certain cosmetic procedures in a medical office setting. He leased a PhotoDerm Vasculight machine from a company called ESC Medical Systems, and this machine was delivered to his Salinas office in September or October 1998. The PhotoDerm Vasculight machine was designed for the treatment/removal of pigmented lesions, varicose veins, spider veins, reticular veins, age spots and hair. It works on the principle of light selectively being absorbed into pigment and then being converted into heat energy. The heat induces photocoagulation of blood vessels, a mild thermal destruction, without actually bursting the vessels. The body apparently repairs this damage and absorbs the damaged vein. This process causes the vein or cosmetic blemishes to fade. The concept and technology were developed and tested through the early 1990s, and approved by the Food and Drug Administration in early 1994. It is viewed as a relatively safe and non-invasive alternative to previous modes of removing blemishes. For example, one alternative, sclerotherapy, requires injection of an irritating solution to destroy the inner lining of veins, causing clotting and spasm. The new technology eliminated the need for sclerotherapy for most patients.

There are other light emitting devices on the market similar to the one manufactured by ESC Medical Systems. However, the PhotoDerm Vasculight machine is unique in that it combines two light components into a single unit. The PhotoDerm component emits intense pulse light (IPL) through a hand piece, 5 to 15 mm wide. Filters are used to vary the wavelength of light emitted and this will affect the degree of skin penetration. For example, shorter wavelengths (550 nanometers (nm)) will penetrate 1 – 2 mm, and longer wavelengths (near the infrared spectrum) will penetrate 4 – 6 mm. The amount or dose of light delivered per surface unit area is called fluence, and it is measured in joules per square centimeter (J/cm²). The duration and number of pulses can also be varied. The operator may input these several parameters into a computer software program that allows for individualized settings. Patients are typically categorized according to a Fitzpatrick skin type scale that

incorporates their responses to a questionnaire on genetic disposition, reaction to sun exposure and tanning habits. The resulting Fitzpatrick scaled score (Skin Types I – VI) will guide the operator in making appropriate settings. The PhotoDerm or IPL component is particularly effective for treating the small varicose and “spider veins.”

The second component (Vasculight) is essentially a laser. It is a single very long wavelength (1064 nm) of light amplified by reflecting mirrors. The beam from the laser hand piece is relatively small (4 mm circle) and because it emits a stronger and more coherent light beam it can be used effectively to treat larger veins. The Photoderm Vasculight machine operator can alternate between IPL or laser settings. The machine itself can also provide the operator with recommended settings based on the patient’s skin type and the type of lesion (small, medium or deep) that is being treated. The operator may accept these settings or enter different ones. When the treatment is completed, information about each patient’s treatment is stored in the machine’s computer and can be retrieved later and printed at any time. These records contain patient identifying information, skin type, date and site of treatment, and the settings/figures for wavelength, fluence, pulse duration and number. The operator can also type narrative information under sections describing “Immediate response” and “Note.”

6. Respondent and Vina Basile both received training on the operation and use of the PhotoDerm Vasculight from the manufacturer. Both operated the machine. Vina Basile was VCEC’s only officer and sole shareholder. Respondent was a non-salaried employee of VCEC. His duties as the corporation’s medical director were to obtain patient histories, conduct physical examinations and determine whether individuals were viable candidates for cosmetic procedures. After obtaining the patient’s Fitzpatrick skin typing he would determine the appropriate IPL or laser settings for patients. Respondent also had sole responsibility for preparing and submitting patient medical evaluations and for setting fees. There were times when Vina Basile used the machine on patients without respondent also being present.

* * * * *

LEGAL CONCLUSIONS

Unlicensed Medical Practice

1. Respondent is charged with aiding and/or abetting the unlicensed practice of medicine. The primary issue is whether unlicensed individuals can administer IPL or laser treatments to patients.

The scope of medical practice is defined by statute. It cannot be expanded by consideration of practitioners’ knowledge, skill, experience or what is taught to practitioners in schools and colleges. (See *People v. Mangiagli* (1950) 97 Cal.App.2d Supp. 935, 939; *Crees v. California State Board of Medical Examiners* (1963) 213 Cal.App.2d 195, 204;

Magit v. Board of Medical Examiners (1961) 57 Cal.2d 74, 85.) Neither can the scope of medical practice be determined by the practices which have developed in the medical profession and are allegedly common. (*Crees v. California State Board of Medical Examiners, supra*, 213 Cal.App.2d at pp. 207-208; *Magit v. Board of Medical Examiners, supra*, 57 Cal.2d at pp. 85-86.) The custom and practice of a particular industry or profession is not controlling in determining the intent of the legislature. (*Jacobsen v. Board of Chiropractic Examiners* (1959) 169 Cal.App.2d 389, 395; *Bendix Forest Products Corp. v. Division of Occupational Safety and Health* (1979) 25 Cal.3d 465, 471.) Thus, statutory interpretation is purely a question of law.

The fundamental rule of statutory construction is that a court should ascertain the intent of the legislature so as to effectuate the purpose of the law. (*T.M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 277.) Reference is first made to the words of the statute. They are to be construed in context of the nature and obvious purpose of the statute where they appear. An attempt is to be made to give effect to the usual and ordinary import of the language and to avoid making any language mere surplusage. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School District* (1978) 21 Cal.3d 650, 658-659.) Ordinarily, if the statutory language is clear and unambiguous, there is no need for judicial construction. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.)

2. The relevant statute in this case is Business and Professions Code section 2052, subdivision (a), which provides as follows:

...[A]ny person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, ...

Companion section 2051 of the Business and Professions Code authorizes a physician certificate holder “to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions.”

It is clear that the legislature intended to allow only those holding certain certificates to treat blemishes, or other physical conditions. (Bus. & Prof. Code, § 2052, subd. (a).) It is also clear that included within the scope of medical practice is the physician’s authority “to penetrate the tissues of human beings and to use any and all other methods” in the treatment of physical conditions. (Bus. & Prof. Code, § 2051.) IPL and laser treatment fall within the

ambit of these statutes. These medical devices are designed to treat blemishes or physical conditions involving the veins and skin. Human tissue is penetrated anywhere from 1 to 6 mm depending upon the machine setting. And such tissue penetration is not without attendant risks. The informed consent form warned the patient of the possibility of rare side effects such as scarring and permanent discoloration, as well as short term effects such as reddening, mild burning, temporary unsightly bruising, and temporary discoloration of skin. These negative outcomes were confirmed by medical expert John Stuart Nelson, M.D., and also by the experience of patient S.S. In short, the use of IPL and laser clearly involves penetration of human tissue and therefore falls within the scope of medical practice.

3. Respondent agrees that Business and Professions Code section 2052 is the governing statute. He contends rather that medical “practice” is a term of art and that unlicensed medical assistants are permitted to provide adjunctive and technical supportive services to physicians under authority of Business and Professions Code section 2069. Subdivision (a)(1) of Business and Professions Code section 2069 provides: “Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or a licensed podiatrist.” “Specific authorization” means a specific written order prepared by the supervising physician authorizing the procedures to be performed and placed in the patient’s medical record. (Bus. & Prof. Code, § 2069, subd. (b)(2).) “Supervision” must be by one “who shall be physically present in the treatment facility during the performance of those procedures.” (Bus. & Prof. Code, § 2069, subd. (b)(3).) “Technical supportive services” is defined as “simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a license physician and surgeon....” (Bus. & Prof. Code, § 2069, subd. (b)(4).) Regulations set forth specific technical supportive services that can be performed by medical assistants, including administration of medications orally, sublingually, topically, vaginally or rectally; performing electrocardiogram, electroencephalogram or plethysmography tests; application and removal of bandages and dressings and certain orthopedic appliances; removal of sutures or staples from superficial incisions or lacerations, performing ear lavage; and collection by non-invasive techniques specimens for testing. (Cal. Code Regs., tit. 16, § 1366, subd. (b).)

Respondent notes that medical assistants are allowed by law to perform procedures at least as invasive as IPL or laser treatments, including administration of medication by intramuscular injections. He contends that medical assistants who are merely providing adjunctive services to a physician’s medical practice and who are not practicing a particular profession – that is to say, they are not independently exercising discretion and specialized training to prescribe and implement a course of action – are not practicing medicine. (*PM & R Associates v. Workers Comp. Appeals Bd.* (2000) 80 Cal.App.4th 357.) Respondent believes Vina Basile’s administration of IPL and laser treatment should be viewed in this same light.

4. Business and Professions Code section 2069 carefully limits the type of, and manner by which medical assistants perform certain procedures. In all cases the procedures must be performed while certain approved supervisors are physically present in the treatment facility. Respondent was not always physically present when Vina Basile administered IPL and laser treatments to patients. The tasks performed by medical assistants are to be “simple routine medical tasks and medical procedures” that may be performed by one who has limited training. In some respects, Vina Basile performed in a strictly adjunctive capacity to respondent. Respondent, and not Vina Basile, was responsible for making overall treatment decisions. For example, it was respondent who obtained patient histories, performed physical examinations, determined whether patients were appropriate candidates for treatment and who determined appropriate machine settings. Vina Basile exercised no independent discretion and she had not authority in these areas. Yet it was Vina Basile who was 100 percent shareholder and sole corporate officer for VCEC. It was her business. Importantly, the treatment was not ancillary to respondent’s workup or diagnosis of a patient’s condition. Instead, it was the primary treatment mode sought by patients seeking removal of unsightly varicose veins or other cosmetic blemishes. In that regard it differs from most, if not all, of the “technical supportive services” routinely performed by medical assistants. (Cal. Code Regs., tit. 16, § 1366, subd. (b).) When Vina Basile provided IPL/laser treatment to patients, particularly when respondent was absent from the facility, she was not performing adjunctive services for respondent. She engaged in the unlicensed practice of medicine.

Respondent points out that intradermal, subcutaneous or intramuscular injections performed by medical assistants involve more penetration of human tissue than IPL or laser. However, these are limited exceptions, set forth in statute, to the general rule limiting those who are authorized to penetrate tissue for medical purposes. And even before medical assistants can perform intramuscular, subcutaneous and intradermal injections, or venipuncture for the purposes of withdrawing blood, they are required to complete minimum training (10 hours for each of the different procedures) and to demonstrate proficiency to their supervising physicians. (Cal. Code Regs., tit. 16, § 1366.1.) No such regulations are in place to ensure that medical assistants operating IPL/laser machines are adequately trained. The training received by Vina Basile from ESC Medical Systems may have been adequate, but it is irrelevant to the question of whether there is a legislative intent to include procedures such as IPL/laser within the definition of “technical supportive services” that can be performed by medical assistants. That simply does not appear to be the case at this time. Absent further legislative authority and/or regulatory action, medical assistants cannot legally perform IPL/laser treatments on patients.

5. Respondent aided and/or abetted the unlicensed practice of medicine by allowing Vina Basile to use the IPL/laser to treat patients. Business and Professions Code section 2264 provides: “The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person ... to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.” A violation of section 2264 does not require a showing of either knowledge or intent on the part of the practitioner. (*Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1844-1845.) The

objective of section 2264 is the protection of the public from certain forms of treatment by unlicensed and presumably unqualified persons. (*Newhouse v. Board of Osteopathic Examiners* (1958) 159 Cal.App.2d 728, 734.)

For these reasons, cause for disciplinary actions exists under Business and Professions Code section 2264. Respondent engaged in unprofessional conduct by aiding and/or abetting the unlicensed practice of medicine by Vina Basile.

* * * * *

DATED: July 16, 2004

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Accyle 20 09
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11 **BEFORE THE**
12 **MEDICAL BOARD OF CALIFORNIA**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:
15 WILLIAM J. WOLFENDEN, JR., M.D.
16 1 Daniel Burnham Court, Suite 368C
San Francisco, CA 94109-5455
17 Physician's and Surgeon's Certificate
18 No. A21279
19 dba PURE MED SPA CALIFORNIA
20 Fictitious Name Permit No. 38277
21 Respondent.

Case No. 12 2008 196110

ACCUSATION

22 Complainant alleges:

23 **PARTIES**

- 24 1. Barbara Johnston (Complainant) brings this Accusation solely in her official
25 capacity as the Executive Director of the Medical Board of California.
26 2. On or about July 16, 1964, the Medical Board of California issued Physician's and
27 Surgeon's Certificate Number A21279 to William J. Wolfenden, Jr., M.D., ("Respondent" or

28 ///

1 "Dr. Wolfenden"). The Physician's and Surgeon's Certificate was in full force and effect at all
2 times relevant to the charges brought herein and will expire on February 28, 2010, unless
3 renewed.

4 3. On or about March 26, 2008, Dr. Wolfenden filed Articles of Incorporation with
5 the Secretary of State, State of California, indicating that he formed a California Professional
6 Corporation, "OMNICARE CONSULTING MEDICAL GROUP, INC."

7 4. On or about March 29, 2008, Dr. Wolfenden filed for a Fictitious Name Permit
8 with the Medical Board for "OMNICARE CONSULTING MEDICAL GROUP, INC." with an
9 alternate choice being "PURE MED SPA CALIFORNIA."

10 5. On or about October 17, 2008, the Medical Board of California issued Fictitious
11 Name Permit No. 38277 for "PURE MED SPA CALIFORNIA" to William J. Wolfenden, Jr.,
12 M.D.. The Fictitious Name Permit was canceled at respondent's request on April 8, 2009.

13 NON-LICENSURE

14 6. At all times herein, a "Herbert Kollinger" or "Dr. Kollinger" was not licensed by
15 the Medical Board of California as a physician and surgeon nor was he licensed by the
16 Osteopathic Medical Board of California as an osteopathic physician.

17 7. At all times herein, neither "John Street Holdings, LLC," nor "Pure Laser Hair
18 Removal & Treatment Clinics, Inc.," nor "2012710 Ontario Inc.," were licensed by the Medical
19 Board nor registered with the California Secretary of State as a California professional medical
20 corporation.

21 JURISDICTION

22 8. This Accusation is brought before the Medical Board of California¹ under the
23 authority of the following laws or other authorities. All section references are to the Business
24 and Professions Code ("Code") unless otherwise indicated.

25 ///

26

27

28 1. The term "Board" means the Medical Board of California. "Division of Medical
Quality" shall also be deemed to refer to the Board. (Bus. & Prof. Code §2002) 27.15

BUSINESS AND PROFESSIONS CODE

9. Section 2004 of the Code provides, in pertinent part, that the Medical Board shall have responsibility for:

“(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. . . “

10. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

11. Section 2234 of the Code provides, in pertinent part:

"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:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

* * * *

(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.

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

3 12. Section 23.7 of the Code provides that "License" means license,
4 certificate, registration or other means to engage in a business or profession
5 regulated by this Code or referred to in Section 1000 or 3600.

6 13. Section 119 of the Code states in relevant part as follows:

7 "Any person who does any of the following is guilty of a misdemeanor:

8 (2)(b) Lends his or her license to any other person or knowingly permits
9 the use thereof by another.

10 (2)(e) Knowingly permits any unlawful use of a license issued to him or her."

11 14. Section 125 of the Code states:

12 "Any person licensed under Division 1 (commencing with section 100),
13 Division 2 (commencing with section 500), or Division 3 (commencing with
14 section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions
15 of this code applicable to him or her, who conspires with a person not so licensed
16 to violate any provision of this code, or who, with intent to aid or assist that
17 person in violating those provisions does either of the following:

18 (a) Allows his or her license to be used by that person.

19 (b) Acts as her or his agent or partner."

20 15. Section 145 of the Code states, in part, as follows:

21 "The Legislature finds and declare that:

22 "(a) Unlicensed activity in the professions and vocations regulated by the
23 Department of Consumer Affairs is a threat to the health, welfare, and safety of
24 the people of the State of California."

25 16. Section 650 of the Code provides, in pertinent part:

26 "(a) Except as provided in Chapter 2.3 (commencing with Section 1400)
27 of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or
28 acceptance by any person licensed under this division or the Chiropractic Initiative

1 Act of any rebate, refund, commission, preference, patronage dividend, discount,
2 or other consideration, whether in the form of money or otherwise, as
3 compensation or inducement for referring patients, clients, or customers to any
4 person, irrespective of any membership, proprietary interest or coownership in or
5 with any person to whom these patients, clients, or customers are referred is
6 unlawful.

7 “(b) The payment or receipt of consideration for services other than the
8 referral of patients which is based on a percentage of gross revenue or similar type
9 of contractual arrangement shall not be unlawful if the consideration is
10 commensurate with the value of the services furnished or with the fair rental value
11 of any premises or equipment leased or provided by the recipient to the payer.”

12 17.e Section 651 of the Code provides, in pertinent part: e

13 “(a) It is unlawful for any person licensed under this division or under any
14 initiative act referred to in this division to disseminate or cause to be disseminated
15 any form of public communication containing a false, fraudulent, misleading, or
16 deceptive statement, claim, or image for the purpose of or likely to induce,
17 directly or indirectly, the rendering of professional services or furnishing of
18 products in connection with the professional practice or business for which he or
19 she is licensed. A "public communication" as used in this section includes, but is
20 not limited to, communication by means of mail, television, radio, motion picture,
21 newspaper, book, list or directory of healing arts practitioners, Internet, or other
22 electronic communication.

23 “(b) A false, fraudulent, misleading, or deceptive statement, claim, or image
24 includes a statement or claim that does any of the following: (1) Contains a
25 misrepresentation of fact. (2) Is likely to mislead or deceive because of a failure to
26 disclose material facts. (3) (A) Is intended or is likely to create false or unjustified
27 expectations of favorable results, including the use of any photograph or other
28 image that does not accurately depict the results of the procedure being advertised.”^{27.18}

1 use of the fictitious name, "Pure Med Spa" prior to October 17, 2008, when no such fictitious
2 name was registered by the Medical Board; and/or

3 L. Dr. Wolfenden aided and abetted the unlicensed practice of medicine by
4 agreeing to and/or otherwise allowing unlicensed persons or entities to have custody and control
5 of patient medical records, and/or to order and maintain drugs, biologicals, and pharmaceuticals,
6 via using Dr. Wolfenden's Medical License or DEA License; and/or

7 M.. Dr. Wolfenden, by his aiding and abetting John Street Holding, LLC, in
8 maintaining a false public perception that the Pure Med Spa clinics were and are lawfully and
9 properly licensed medical clinics owned and operated by physicians or other qualified health
10 professionals, essentially was taking compensation for drawing or referring patients to the Pure
11 Med Spa clinics in violation of Business and Professions Code section 650.

12 N. Dr. Wolfenden agreed to employment by and thereafter functioned as a
13 "consultant" and/or as an "independent contractor" and/or as a "Supervising Physician" and/or as
14 a "Medical Director" to a nonprofessional medical corporation owned and/or operated by
15 unlicensed persons, but failed to examine each patient and provide adequate informed consent to
16 each patient prior to delegating medical procedures to a nurse.

17 O. Dr. Wolfenden agreed to employment by and thereafter functioned as a
18 "consultant" and/or as an "independent contractor" and/or as a "Supervising Physician" and/or as
19 a "Medical Director" to a nonprofessional medical corporation owned and/or operated by
20 unlicensed persons, but failed to have adequate authority or participation in determining the
21 qualifications of and/or hiring of nurses, physicians, and other medical personnel, who were in
22 actuality hired and paid by a nonprofessional medical corporation, John Street Holdings, LLC.

23 **CAUSES FOR DISCIPLINARY ACTION RE RESPONDENT WOLFENDEN**

24 89. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
25 constitutes unprofessional conduct in that he aided or abetted unlicensed persons or entities to
26 engage in the practice of medicine. Respondent is therefore subject to disciplinary action under
27 Section 2264 of the Code.

1 90. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
2 constitutes unprofessional conduct in that he directly or indirectly assisted in or abetted the
3 violation of, or conspired to violate, the following provisions of the Medical Practice Act: section
4 119 (permitting the use of his license by another); section 125 (allowing his license to be used by
5 an unlicensed person or acting as the agent or partner of an unlicensed person); sections 2051,
6 2052, and/or 2054 (unlicensed medical practice). Respondent is therefore subject to disciplinary
7 action under Section 2234(a) of the Code.

8 91. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
9 constitutes unprofessional conduct in that, in assisting in maintaining a false public perception
10 that the Pure Med Spa clinics were and are lawfully and properly licensed medical clinics owned
11 and operated by physicians or other qualified health professionals, he essentially was taking
12 compensation for drawing or referring patients to the Pure Med Spa clinics in violation of
13 Business and Professions Code section 650. Respondent is therefore subject to disciplinary action
14 under Sections 2234(a) of the Code.

15 92. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
16 constitutes grounds for discipline in that he disseminated or caused to be disseminated public
17 communications containing a false, fraudulent, misleading, or deceptive statement, claim, or
18 image for the purpose of or likely to induce, directly or indirectly, the rendering of professional
19 services or furnishing of products in connection with the professional practice or business via his
20 aiding and abetting John Street Holding, LLC, in advertising, via the Internet, brochures,
21 newspaper, telephone directory, and other public media, that the Pure Med Spa clinics were and
22 are lawfully and properly licensed medical clinics owned and operated by California licensed
23 physicians or other qualified health professionals, when, in fact, the Pure Med Spa clinics are
24 owned and operated by a nonprofessional medical corporation operated by unlicensed persons.
25 Respondent is therefore subject to disciplinary action under sections 651(a) through 651(g) and/or
26 section 2271 of the Code.

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1 93. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
2 constitutes unprofessional conduct in that he violated the AMA Code of Medical Ethics.
3 Respondent is therefore subject to disciplinary action under Section 2234 of the Code.

4 94. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
5 constitutes unprofessional conduct in the practice of his profession through the commission of
6 act(s) involving dishonesty or corruption. Respondent is therefore subject to disciplinary action
7 under Sections 2234(e) of the Code.

8 95. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
9 constitutes unprofessional conduct in the use of a fictitious, false, or assumed name, or any name
10 other than his own name, or as the name of a professional corporation, in public communications,
11 advertisements, without a fictitious name permit obtained pursuant to section 2415 of the Code.
12 Respondent is therefore subject to disciplinary action under section 2285 of the Code.

13 96. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
14 constitutes unprofessional conduct in that, although he ultimately formed a professional
15 corporation, it performed acts that were in conflict with or were prohibited by the Medical
16 Practice Act. Respondent is therefore subject to disciplinary action under Section 2234(a) of the
17 Code in conjunction with California Code of Regulation sections 1344(b) and/or 1347(a).

18 97. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
19 constitutes unprofessional conduct in that he submitted documentation applying for a fictitious
20 name permit and forming a professional corporation, while knowing that the documents falsely
21 represented or gave the false impression that he would own and operate the entity responsible for
22 the practice of medicine on California citizens, when he knew that John Street Holdings, LLC, an
23 unlicensed entity, would own and operate the Pure Med Spa clinics. Respondent is therefore
24 subject to disciplinary action under Section 2261.

25 98. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,
26 constitutes unprofessional conduct in that, as a Supervising Physician or Medical Director of the
27 Pure Med Spa clinics, he was fully aware of the advertising of the Pure Med Spa clinics via the
28 Internet, brochures, newspaper, telephone directory, and other public media but failed to use his

1 name or fictitious name in the advertisements as required by Business and Professions Code
2 section 2272. Respondent is therefore subject to disciplinary action under Section 2272.

3 99.e Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,e
4 constitutes unprofessional conduct in the practice of his profession in violation of Business and
5 Professions Code sections 2286, in that he violated, or attempted to violate, directly or indirectly,
6 or assisted in or abetted the violation of, or conspired to violate, the Moscone-Knox Professional
7 Corporation Act, Corporations Code sections 13400, 13401, 13401.5, 13404, 13406, 13408.5,
8 13410, et seq., and/or Business and Professions Code sections 2402, 2406, and 2408, and/or
9 California Code of Regulations sections 1360, 1344 and 1347. Respondent is therefore subject to
10 disciplinary action under Section 2286.

11 100.e Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,e
12 constitutes unprofessional conduct in that, in aiding or abetting unlicensed persons or entities to
13 engage in the practice and advertising of medicine, he engaged in unlawful, unfair or fraudulent
14 business acts or practices and/or unfair, deceptive, untrue or misleading advertising. Respondent
15 is therefore subject to disciplinary action for unprofessional conduct through dishonest or corrupt
16 acts under section 2234(e) of the Code

17 101. Respondent's conduct, as set forth hereinabove in the Events, Acts or Omissions,e
18 constitutes general unprofessional conduct. Respondent is therefore subject to disciplinary action
19 under Section 2234 of the Code.

20 **PRAAYER**

21 WHEREFORE, Complainant prays that the Board hold a hearing on the matters
22 alleged herein, and following said hearing, issue a decision:

23 1.e Revoking or suspending Physician and Surgeon's Certificate No. A 21279,e
24 issued to William J. Wolfenden, JR., M.D.;

25 2.e Revoking or suspending William J. Wolfenden, JR., M.D.'s authority to e
26 supervise physician assistants, pursuant to section 3527 of the Code;

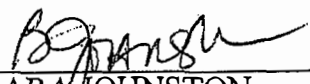
27 3.e Ordering William J. Wolfenden, JR., M.D., if placed on probation, to paye
28 the Medical Board the costs of probation monitoring; and

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

DATED: August 6, 2009



BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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

In the Matter of the Accusation Against:

SASANKA MUKERJI, M.D.,

Physician's and Surgeon's Certificate
No. A 16848,

Respondent.

Case No. 03-2004-157707

OAH No. 2008030013

DECISION AFTER REMAND

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 16, 2008.

Deputy Attorney General Lynne K. Dombroski represented complainant Barbara Johnston, Executive Director of the Medical Board of California.

Respondent Sasanka Mukerji, M.D., was present and represented himself.

The record was left open for submission of written closing argument. Complainant's Closing Brief was filed June 24, 2008, marked for identification as Exhibit 40. Respondent's Closing Brief was received July 1, 2008, and although it was not timely filed, was marked for identification as Exhibit A and considered. Complainant's Reply Brief was received on July 8, 2008, and although it was not timely filed, was marked for identification as Exhibit 41 and considered. The record was closed and the matter was submitted for decision on July 8, 2008.

On July 24, 2008, the administrative law judge submitted her proposed decision to the Medical Board of California. The board adopted that decision to become effective on October 10, 2008.

Thereafter, respondent filed a Petition for Writ of Mandate in San Francisco County Superior Court, Case No. CPF-08-5088 63. On March 1, 2010, the court issued its Judgment in the matter, granting the peremptory writ of administrative mandamus in part and denying it in part, commanding the board to reconsider the penalty imposed in accordance with the court's direction in the Order and prohibited the board from re-imposing revocation of respondent's license.

Written argument was submitted by both parties and oral argument was held before Panel B on July 29, 2010. Present were Panel members Moran, Levine, Chang, Schipske, Low and

Esrailian.

Having reconsidered the penalty pursuant to the court's direction in the Judgment and Order, the Panel hereby vacates its prior decision and now makes a modified decision in compliance therewith. A copy of the Judgment and Order is attached as Exhibit "A" and incorporated herein by reference.

FACTUAL FINDINGS

1.e On June 4, 1956, the Medical Board of California (board) issued Physician's and Surgeon's Certificate No. A 16848 to respondent Sasanka Mujerki, M.D. (respondent). At respondent's request, the board granted him retired status on June 30, 1988. At respondent's request, the board removed him from retired status on May 25, 2004. The certificate is renewed and current with an expiration date of January 31, 2010.

Respondent's Background

2.e Very little evidence was presented regarding respondent's background. Respondent is a foreign medical school graduate. Respondent is an ophthalmologist. Respondent is not board-certified, but testified that he was certified in England 50 years ago by the Royal College of Surgeons. Respondent worked some 30 years as a physician with Kaiser Permanente in Vallejo, in both ophthalmology and otolaryngology. The date that respondent left his employment with Kaiser was not established, but it appears that it took place around the time that he entered retired status with the board.

Citation for Alpha Laser View

3.e From about 1999 to 2002, respondent was Medical Director of Alpha Laser View, a non-medical corporation that provided laser eye surgery in Sunnyvale, California. Respondent examined patients and performed follow-up care, but he did not perform the laser surgery.

4.e At no time did respondent obtain a fictitious name permit to operate under the name of Alpha Laser View. Following an investigation, the board determined that Alpha Laser View was owned and operated by an unlicensed person.

5. On February 28, 2003, the board issued Citation No. 03-2002-130396 to respondent for aiding and abetting the unlicensed practice of medicine in violation of Business and Professions Code section 2264. The specific allegations of the citation were that respondent "aided and abetted the unlicensed practice of medicine in that [respondent] provided medical services for a non-medical corporation 'Alpha Laser View' which was owned and operated by a lay person." The citation ordered respondent to cease and desist aiding and abetting the unlicensed practice of medicine, and to pay an administrative fine of \$2,500.

6.e Respondent did not contest the citation, and paid the administrative fine.

The Surgery Center

7.e San Jose Eye Ambulatory Surgicenter, Inc., was located at 4858 Stevens Creeke Boulevard, Suite 500, in Santa Clara, California. The surgery center operated under this and other names over the times relevant to this proceeding, including Carmel Surgical Institute, Pacific Creek Surgery Center, and Santa Clara Ambulatory Surgical and Medical Center. For ease of reference, it will be referred to as the surgery center unless a more specific name is needed for clarity.

8. The evidence established that from at least April 2000 to June 2004, the surgery center was a non-medical corporation, owned and operated by unlicensed persons, whose primary purpose was to provide medical evaluation, diagnosis and treatment. The non-medical corporation did not qualify as a professional corporation under the Moscone-Knox Professional Corporations Act because it was not owned and controlled by a licensed California physician and surgeon, and it was not exempt from the prohibition against the corporate practice of medicine.

9.e From at least April 2000 until June 2004, respondent acted as medical director of the surgery center.¹ In that role, he aided and abetted the unlicensed and unlawful practice of medicine as well as the violation of the Moscone-Knox Professional Corporations Act.

10.e Respondent assisted in keeping the surgery center operating by numerous acts which hid the identity of the surgery center's true owner.

Respondent allowed the surgery center to use his medical license to obtain in 1997, and to renew in 2003, a clinic permit from the California Board of Pharmacy which authorized the purchase of dangerous drugs and controlled substances. Pharmacy Board records show respondent to be an officer and an administrator of San Jose Eye Ambulatory Surgicenter, Inc., from January 29, 1997, to September 16, 2005. The initial application for the clinic permit, filed with the Pharmacy Board in July 1996, listed Joseph Chan, Ph.D., as CEO and Owner. The 2003 renewal application listed respondent as medical director and owner.

As discussed more fully below, respondent also allowed the business lease to be assigned to him in 2002. In 2003, he submitted to the board a fictitious name permit application. Respondent represented to many, including the board, the Board of Pharmacy, and the Department of Health Services, that he was the owner of the surgery center. Although respondent took preliminary steps towards purchasing the surgery center, he never completed the purchase. Respondent has never owned the surgery center. The Superior Court found that the weight of the evidence does not support a finding that respondent dishonestly filed a false fictitious name permit.

¹ Even as early as January 1996, respondent identified himself as administrator of the surgery center to the Department of Health Services.

11.e The facility was licensed by the Department of Health Services in the late 1990s to perform ophthalmology services only. The DHS facility license expired in July 2002 for lack of renewal.

12.e In early 2003 DHS Investigator Glenn Koike received an anonymous complaint that surgeries were being performed in the now unlicensed facility. He made an unannounced inspection on February 1, 2003, with medical board investigator Doris Pau. The facility had been totally remodeled without notification to DHS. There were boxes of patient records marked Pacific Creek Surgery Center, and surgery logs bearing that name. The records established that surgeries, other than eye surgeries, were being performed on the premises, including surgeries that required general sedation. Posted on the wall was the Board of Pharmacy clinic permit for the facility in the name of San Jose Eye Ambulatory Surgicenter, listing respondent as owner and medical director. The check for the permit was written by Carmel Surgical Institute. Christine Zilka (also known as Christine Lee) was the facility administrator. Christine Zilka identified respondent as the owner of the surgery center to Koike. The staff present at the facility understood that their employer was Carmel Surgical Institute.

13.e On April 1, 2003, DHS issued to respondent a cease and desist order for the continued unlicensed operation of the surgery center. The order advised respondent that he was operating the clinic without a license in violation of Health and Safety Code section 1205, and ordered him "to cease and desist immediately from continued unlicensed operation."

The order was served on the facility that same day. Board investigator Pau inventoried and seized all controlled substances found on the premises.

14. The surgery center continued to operate after the April 2003 DHS cease and desist order was issued. The surgical facility closed following the seizure of facility assets by a federal court receiver on June 2, 2004. Board investigator Pau inventoried and seized the controlled substances found on the premises on that date. Medical records established that surgeries that required sedations had been performed after the DHS cease and desist order had been issued to respondent.

15.e In June 2003, a \$2.9M civil judgment was entered against Haya Zilka for insurance fraud. A receiver was appointed to enforce the judgment over the businesses deemed by the court to be alter egos of Zilka, including Lodis Healthcare, Inc., Carmel Surgical Institute, San Jose Eye Ambulatory Surgicenter, also known as Pacific Creek Surgery Center. Milton Beard II was an adjuster for the court-appointed receiver. In connection with his efforts to secure the assets associated with San Jose Eye Ambulatory Surgicenter, he spoke with several employees of the business, including respondent, who identified himself as the surgery center's medical director.

16.e In a declaration by Zilka dated June 25, 2004, and filed in connection with her bankruptcy proceedings, Zilka acknowledged that she was the sole owner of San Jose Eye Ambulatory Surgicenter, Lodis Healthcare Services, Inc., and Carmel Surgical Institute.

The 2002 Assignment of the Business Lease

17.e In March 2002, respondent allowed the business lease for the surgery center to be assigned to his name. Respondent agreed to this so that the surgery center could obtain facility licensing from DHS.

Respondent's April 2003 Meeting with the Medical Board

18.e Respondent was interviewed by board investigator Pau and District Supervisor Bill Holland on April 11, 2003. The purpose of the meeting was to discuss the citation and fine for respondent's conduct in aiding and abetting the unlicensed practice of medicine with Alpha Laser Vue. But, respondent was also interviewed and counseled about his association with the surgery center.

19. e During this meeting, respondent denied being either an owner or shareholder of San Jose Eye Ambulatory Surgicenter, or Lodis Healthcare Services, Inc. Respondent admitted that he had signed a memorandum of understanding to purchase the shares of stock of San Jose Eye Ambulatory Surgicenter from Lodis Healthcare, but no money had been exchanged. Respondent also admitted that he had signed documents as president of the surgery center, which he was not. Respondent admitted that he knew that both the surgery center and Lodis Healthcare were owned by unlicensed persons.

Respondent was advised that he could not provide medical services for a non-medical corporation, and that he could not allow a non-medical corporation to share in profits for medical services. Respondent acknowledged he understood these principles. Respondent said he would no longer work for either company and he blamed his attorneys for giving him bad information. The Superior Court found respondent's reliance upon the advice of his attorneys to be a mitigating factor.

20. e Because corrective counseling was given to respondent at the April 1, 2003,e meeting, the board closed its investigation on respondent with respect to his association with the surgery center.

The 2003 Application for a Fictitious Name Permit

21.e On April 10, 2003, respondent submitted to the board, as a medical corporation, a fictitious name permit application for the name "San Jose Ambulatory Surgical & Medical Center, Inc." located at the surgery center's Santa Clara address. In a statement that he signed under penalty of perjury, respondent listed himself as President/CEO and as a shareholder. Respondent listed six other physicians as applicants and shareholders: Andres/Andrew Olesijuk, M.D., Leon Daykhovshy, M.D., Amit Mathur, M.D., Dung Cai, M.D., Athiya Javid, M.D., and David Glick, M.D. Respondent certified that at least 51 percent of the corporation's shares "are owned by a licensed physician and surgeon or podiatrist. . . ."

22.e On June 13, 2003, the board sent respondent, through his attorney, a deficiencye

notice regarding the fictitious name permit application. The board notified respondent that the application was being returned for three reasons: the corporate name was not correctly listed; the fictitious name was for San Jose while the practice address was in Santa Clara; and, (3) many of the license numbers for the physicians were incorrect. Respondent was directed to correct the deficiencies and to resubmit the application.

23.e On June 17, 2003, respondent, through his attorney, submitted to the board a revised application for a fictitious name permit. This application requested the permit be issued in the name, "Santa Clara Ambulatory Surgical & Medical Center, Inc.," at the same Santa Clara address. The revised application removed the names of four physicians previously listed as applicants and shareholders, and listed only three physicians as applicants and shareholders: Dr. Javid, Dr. Mathur, and a physician not listed on the initial application, Clark B. Fuller, M.D.

24.e On June 19, 2003, the board did issue a fictitious name permit to "Santa Clarae Ambulatory Surgical and Medical Center, Inc." Respondent did not disassociate himself from the fictitious name permit until March 4, 2005, almost a year after the surgery center was closed.

25.e The Superior Court found that the evidence was not sufficient to support a finding that respondent made a number of false representations on the fictitious name permit application that he had executed under penalty of perjury.

Respondent's January 2005 Meeting with Medical Board Personnel

26.e Board investigator Pau interviewed respondent on January 18, 2005. Respondent initially told Pau that he was the owner of the surgery center. After she showed him documents from the federal court proceedings involving Zilka, respondent changed his position and said that Zilka was the true owner of the surgery center, but that he often referred to himself as the owner. Respondent admitted that he knew Zilka was unlicensed. And, respondent admitted he had applied for the fictitious name permit in order to assist Zilka in obtaining facility licensing.

Respondent's Evidence

27.e Respondent gave contradictory testimony regarding his association with the surgery center. His basic defense to the allegations is that his intent all along was to purchase the surgery center from Zilka in order to make a living. He thought he was doing everything right to achieve that goal, and he relied on his attorneys to make the purchase take place, but everything eventually fell apart when the federal receiver stepped in.

Respondent did take some steps toward the purchase. On June 3, 2002, he filed articles of incorporation as Sasanka Mukerji, a Professional Corporation. On March 1, 2003, respondent, as president of his corporation, signed a purchase agreement with Lodis Healthcare Services, Inc., Haya Zilka, president, wherein he agreed to purchase all outstanding shares of San Jose Eye Ambulatory Surgicenter for \$100,000, in the form of an unsecured promissory note. And he also executed on that date, as President of San Jose Eye Ambulatory Surgicenter, a five-year "Management Agreement" with Lodis Healthcare, Haya Zilka president, for Lodis Healthcare to

manage the surgery center. But as respondent concedes, he never paid any money on the unsecured promissory note to purchase the business.

28.e Respondent does not admit to making any errors in his conduct in connection with the surgery center or with the board.

29.e Respondent is 86 years old. He currently has a small practice in San Jose where he works two days a week. He performs eye and hearing examinations, checks glasses and adjusts hearing aids. Respondent testified that he earns just enough money to live on. He asks that he be allowed to retain his medical license so that he can continue to earn a living.

LEGAL CONCLUSIONS

1.e The standard of proof applied in this proceeding is clear and convincing evidence.

First Cause for Disciplinary Action

2.e By reason of the Superior Court's findings, it was not established that respondent committed unprofessional conduct in the practice of his profession through the commission of an act involving dishonesty or corruption in filing an application for a fictitious name permit with the medical board.

Second Cause for Disciplinary Action

3.e By reason of the Superior Court's findings, it was not established that respondent committed unprofessional conduct in the practice of his profession through the commission of an act involving dishonesty or corruption when he permitted the business lease to be assigned to him.

Third Cause for Disciplinary Action

4.e By reason of the Superior Court's findings, it was not established that respondent committed unprofessional conduct in the practice of his profession through the commission of an act involving dishonesty or corruption in representing to the board's investigator in 2005 that he was the owner of the surgery center.

Fourth Cause for Disciplinary Action

5.e By reason of the matters set forth in Factual Findings 8 through 17, respondent committed unprofessional conduct in the practice of his profession through the commission of acts that aided and abetted unlicensed persons to operate a non-medical corporation. Respondent's conduct constitutes cause for disciplinary action against his license pursuant to Business and Professions Code section 2264 (aiding and abetting unlicensed practice) in connection with sections 1360, 1344, and 1347 of title 16 of the California Code of Regulations.

Fifth Cause for Disciplinary Action

6.e By reason of the matters set forth in Factual Findings 8 through 17, respondent committed unprofessional conduct in the practice of his profession by aiding and abetting the violation of the Moscone-Knox Professional Corporations Act (Corp. Code, § 13400 et seq.). Respondent's conduct constitutes cause for disciplinary action against his license pursuant to Business and Professions Code section 2286 (aiding and abetting violation of the Professional Corporations Act) and Business and Professions Code section 2234 (unprofessional conduct).

Sixth Cause for Disciplinary Action

7.e By reason of the Superior Court's findings, it was not established that respondent committed unprofessional conduct in the practice of his profession by conspiring as a partner and/or agent of an unlicensed person

8.e The case law is clear that the primary purpose of this proceeding is to protect the public, not to punish the licensee. (See e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority; the board's highest priority is protection of the public. (Bus. & Prof., § 2229, subd. (a).) The Medical Practice Act further directs that in exercising its disciplinary authority, the board "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee," although "where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subds. (b) & (c).)

Respondent aided and abetted the operation of a non-medical corporation owned and operated by unlicensed persons after having been issued a citation by the board for the same conduct with a different non-medical corporation. Respondent did this after meeting with board personnel, who gave him corrective counseling on his obligation not to aid and abet the unlicensed practice of medicine with this specific non-medical corporation, and after stating to the board that he would not have any further relationship with the surgery center. Notwithstanding this, respondent continued to act as medical director for the surgery center, and to aid and abet the operation of the non-medical corporation for more than a year. Respondent's relationship with the surgery center only came to an end because of the actions of the federal receiver, not because of any action by respondent.

Respondent claims he relied upon his attorneys, and the Superior Court found such reliance to be a mitigating factor. The Panel notes that a showing of patient harm is not required before discipline may be imposed.

9.e The panel notes the court's many references to respondent's "confusion." It also notes that respondent has not practiced medicine for almost two years. The Panel believes an examination requirement is necessary to protect the public.

ORDER

Physician's and Surgeon's Certificate No. A 16848 issued to respondent Sasanka

Mukerji, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1.e Within 60 calendar days of the effective date of this Decision, respondent shall take and pass an oral and/or written examination, administered by the Probation Unit which at a minimum shall include the area of physical assessment, including hearing and vision. The Board or its designee shall administer the oral and/or written examination in a subject to be designated by the Board or its designee and the oral examination shall be audio tape recorded.

If respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days.

Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations. For purposes of this condition, if respondent is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.

If respondent fails to pass the first examination, respondent shall be suspended from the practice of medicine. Respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent has failed the examination.

Respondent shall remain suspended from the practice of medicine until respondent successfully passes a repeat examination, as evidenced by written notice to respondent from the Board or its designee.

2.e Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice and billing monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusations(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice and billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine or billing, or both, and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Board or designee.

In lieu of a monitor, respondent may, within 60 calendar days of the effective date of this decision, participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

3. Respondent is prohibited from serving as the medical director for any medical practice except one that he solely owns.

4.e Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, or facilities or insurance carrier.

5. During probation, respondent is prohibited from supervising physician assistants.

6.e Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders

7.e Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8.e Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

9.e Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

10.e In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or

permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11.e In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in activities defined in sections 2051 and 2052 of the Business and Professions Code for at least 40 hours in any one calendar month.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

12.e Respondent shall comply with all financial obligations (e.g., probation costs) noted later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

13.e Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14.e Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board

reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

This decision shall become effective at 5 p.m. on September 23 , 2010.

IT IS SO ORDERED this 26th

Chairperson, Panel
Medical Board of California

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

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11 **MEDICAL BOARD OF CALIFORNIA,
12 DIVISION OF MEDICAL QUALITY; THE
13 EMERGENCY MEDICAL SERVICES
AUTHORITY; and PEOPLE OF THE STATE OF
CALIFORNIA,**

14 Plaintiffs,

15 v.

16 **VIRGINIA SIEGEL and ZULEMA GARCIA
17 individuals and doing business as INDUSTRIAL
ON-SITE MEDICS, INDUSTRIAL SAFETY AND
18 HEALTH, INC., a California Corporation, and
DOES I - XX,**

19 Defendants.

Case No.: C 00-03894

**COMPLAINT FOR
PRELIMINARY AND
PERMANENT INJUNCTION**

[Bus. & Prof. Code §§ 125.5, 656,
2052, 2311, and 2400; Health &
Saf. Code § 1798.208]

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 18

20 **THE DIVISION OF MEDICAL QUALITY OF THE MEDICAL BOARD**
21 **OF CALIFORNIA, THE EMERGENCY MEDICAL SERVICES AUTHORITY, and THE**
22 **PEOPLE OF THE STATE OF CALIFORNIA,** by and through their counsel, Bill Lockyer,
23 Attorney General of the State of California, by Jose Guerrero, Deputy Attorney General, allege
24 as follows:

25 1. Plaintiff, The Division of Medical Quality of the Medical Board of California
26 (hereinafter, "Medical Board"), is a state agency of legislative origin, within the Department of
27 Consumer Affairs, and is charged with administering and enforcing the laws and regulations
28 relating to the practice of medicine in this state as set forth in Business and Professions Code

1.

COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION.

1 section 2000, et seq., known and cited as the Medical Practice Act, and in Title 16, California
2 Code of Regulations, section 1300 et seq. Plaintiff, The Emergency Medical Services Authority
3 of the State of California (hereinafter "EMSA"), is a state agency of legislative origin and is
4 charged with administering and enforcing the laws and regulations in part relating to the
5 rendering of prehospital emergency services in this state as set forth in Division 2.5 of the Health
6 and Safety Code beginning at section 1797, et seq., known and cited as the Prehospital
7 Emergency Medical Care Personnel Act, and in Title 22, Division 9, Chapter 4 of the California
8 Code of Regulations, section 100145, et seq.

9 2.t Defendant Virginia Siegel is not now, nor has she ever been, licensed to
10 practice medicine as a physician and surgeon in the State of California. She is licensed as a
11 Paramedic by the EMSA.

12 3.t Defendant Zulema Garcia is not now, nor has she ever been licensed to
13 practice medicine as a physician and surgeon in the State of California.

14 4.t Defendants Industrial Safety and Health, Inc., doing business as Industrial On-
15 Site Medics have engaged licensed physicians and surgeons, licensed paramedics, and other
16 licensed medical professionals to provide an assortment of occupational medical services to the
17 public. Industrial Safety and Health, Inc. is a California corporation with its principal office
18 located at 5100 Clayton Road, # 326, Concord, California. WOLFE + GILPIN
JSA

19 5.t The true names and capacities, whether individual, corporate, or otherwise, of
20 defendants Does I through 100, are not known to plaintiffs at this time. Plaintiffs therefore bring
21 suit against said defendants by such fictitious names. Plaintiffs will ask leave of this Court to
22 amend this complaint to reflect the true names and capacities of said defendants when they have
23 been ascertained. Plaintiffs are informed and believe that each of said defendants is responsible
24 in some manner for the activities alleged and described herein.

25 6. On or about February 22, 1999, defendant Virginia Siegel knowingly and
26 willingly entered into a conspiracy, common enterprise, and common course of conduct with
27 other individuals, including but not limited to Zulema Garcia, for the purpose of evading the
28 requirements of the Medical Practice Act, the Prehospital Emergency Care Personnel Act, the

1d Moscone-Knox Professional Corporation Act, and the acts of false and misleading advertising
2 alleged more particularly below. The first overt act of this conspiracy was the incorporation of
3 Industrial Safety and Health in 1999.d

4 7.dAt various times since that act, other individuals including but not limited to
5 Hugh Wang, M.D. and Michael McBride, and Industrial Safety and Health, Inc., knowingly and
6 willingly entered into and became integral participants in this conspiracy.

7 8.dA fundamental objective of this conspiracy was the formation and incorporation
8 of Industrial Safety and Health, Inc., named as defendant in this action as the alter ego of
9 defendants Virginia Siegel and Zulema Garcia, so that defendants Siegel and Garcia could more
10 efficiently pursue the unlawful objectives of the conspiracy by and through the corporate alter
11 ego. Between 1999 to the present, the co-conspirators, in fact, established this corporation as
12 Ms. Siegel's and Ms. Garcia's alter ego in pursuit of the conspiracy's illegal objectives. At all
13 times mentioned herein, defendants Siegel and Garcia have been and are now the sole
14 shareholders of the above-referenced defendant corporation and they have and will continue to
15 use said entity as a means and device for engaging in the practices and acts herein complained of.

16 9.dPlaintiffs are informed and believe and thereon allege that this conspiracy.d
17 common enterprise, and common course of conduct continues to the present date.

18 10. Whenever in this complaint reference is made to any acts of defendants, or
19 any one of them, such allegations shall be deemed to mean the act of each and every defendant
20 acting pursuant to and in furtherance of the conspiracy and above-alleged agreement.

21 11. Whenever in this complaint reference is made to any act of any corporated
22 defendant, such allegations shall be deemed to mean that defendant corporation did or authorized
23 such acts as the alter ego of defendants Virginia Siegel and Zulema Garcia and furthermore that
24 defendant corporation and its officers, directors, agents, employees, or representatives, did or
25 authorized such acts while actively engaged in the management, direction, or control of the
26 affairs of said corporate defendant, and while acting within the course and scope of their duties.

27 12.dPlaintiff Medical Board is authorized by Business and Professions Coded
28 section 125.5 to obtain, without the requirement of an undertaking, an injunction or other

1 appropriate order against, and to recover investigation expenses from, any person who has
2 engaged in or who is about to engage in any act which constitutes a violation of Chapter 5 of
3 Division 2 [Healing Arts] of the Business and Professions Code, section 2000 et seq., known
4 and cited as the Medical Practice Act.

5 13. Plaintiff Medical Board is authorized by Business and Professions Code
6 section 2311 to obtain an injunction or other appropriate order to restrain the unlicensed practice
7 of medicine without the requirement of an undertaking (Code Civ. Proc., § 995.220 [undertaking
8 not required of public entity or officer].)

9 14. Plaintiff Medical Board and plaintiff People of the State of California are
10 authorized by Business and Professions Code section 656 to obtain an injunction against any
11 person engaging in any act of public communication containing false, fraudulent, misleading, or
12 deceptive statements within the meaning of Business and Professions Code section 651. Plaintiff
13 Emergency Medical Services Authority is authorized by Health and Safety Code sections
14 1798.208 to obtain an injunction or other appropriate order against any person who has engaged
15 in or is about to engage in any act which constitutes a violation of Chapter 7 of Division 2.5
16 (Prehospital Emergency Services) of the Health and Safety Code section 1797, et seq., without
17 the requirement of an undertaking.

18 **FIRST CAUSE OF ACTION**
19 **(Violations of Bus. & Prof. Code, §§ 2052 & 2400)**
20 **(Unlicensed Practice of Medicine)**

21 **RELEVANT STATUTES**

22 15. Business and Professions Code section 2052 provides:

23 s "Any person who practices or attempts to practice, who advertises or holds
24 himself or herself out as practicing, any system or mode of treating the sick or afflicted in
25 this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish,
26 deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
certificate as provided in this chapter, or without being authorized to perform such act
pursuant to a certificate obtained in accordance with some other provision of law, is
guilty of a misdemeanor."

27 16. Business and Professions Code section 2400 provides, in pertinent part, that
28 corporations and other artificial legal entities shall have no professional rights, privileges, or

1 powers.

2 OFFENSES CHARGED

3 17. Defendants, both individuals and the corporation, have conspired to engage in,
4 and have engaged in, and unless restrained and permanently enjoined from doing so by order
5 of this Court will continue to engage in, the unlicensed practice of medicine and the corporate
6 unlicensed practice of medicine in violation of Business and Professions Code sections 2052 and
7 2400 by reason of, but not limited to, the following:

8 (a) Defendants are lay entities who are not, and never have been, licensed in this
9 State to engage in the practice of medicine.

10 (b) Defendants, through their ownership and operation of Industrial On-Site
11 Medics have conspired to hold themselves out to and have held themselves out to the
12 public of California, through, but not limited to, promotional materials, and a website to
13 be duly licensed, capable, and competent to diagnose, treat and cure various afflictions,
14 diseases, and physical conditions through medical procedures. These procedures include,
15 but are not limited to performing, (1) respirator physicals and fits, (2) pre-employment
16 physicals, (3) drug testing, (4) lead monitoring, (5) vaccinations, and (6) audiometric
17 testing.

18 (c) Defendants have conspired to engage and have engaged the services of o
19 licensed physicians and surgeons to diagnose, treat, counsel, and advise the sick and
20 afflicted of this State without ever having the physician and surgeon examine any
21 patients.

22 (d) Defendants conspired to exercise and have exercised complete lay control over o
23 all aspects of the operation of Industrial Safety and Health, Inc., doing business as
24 Industrial On-Site Medics. Physician control over the services provided has been non-
25 existent.

26 (e) Defendants' control over the operation of Industrial Safety and Health, Inc.,
27 doing business as Industrial On-Site Medics, has consistently involved the making of o
28 decisions which bear both directly and indirectly upon the practice of medicine. Such

1 decisions, made either by defendant Virginia Siegel or defendant Zulema Garcia or under
2 their direction, have included, but are not limited to, the following: (1) authorizing staff to
3 control the ordering, storing, and distributing of dangerous drugs, without physician
4 supervision or control; (2) authorizing unlicensed staff to perform medical procedures,
5 including drug injections, without physician knowledge or supervision; (3) determining
6 the type and quality of medical facilities, equipment, and supplies to provide to
7 unlicensed employees; (4) setting physician fees and billing procedures; (5) establishing
8 medical protocol; (6) regulating patient referrals to contracted physicians; (7) exercising
9 dominion over patient records; and (8) authorizing the making of false and misleading
10 advertising and promotional claims to the public.

11 (f) Plaintiffs are informed and believe, and based on such information and belief
12 allege that defendants have conspired to charge and have charged members of the public
13 of this State for medical services provided by Industrial Safety and Health, Inc., doing
14 business as Industrial On-Site Medics and that they have profited therefrom as owners
15 and operators.

16 18. Defendants have conspired to engage in and have engaged in the unlawful
17 practice of medicine and the unlawful corporate practice of medicine, in violation of Business
18 and Professions Code sections 2052 and 2400, in that they have practiced medicine by reason of
19 the aforementioned practices and acts without having valid medical licenses issued by plaintiff
20 Medical Board.

21 19. Unless restrained and permanently enjoined, defendants and each of them will
22 continue to engage in or will resume said aforementioned practices and acts in violation of law as
23 hereinabove set forth.

24 20. Plaintiffs have no adequate remedy at law to prevent defendants from
25 engaging in the aforementioned alleged acts and practices.

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1 **SECOND CAUSE OF ACTION**

2 (Violations of Corp. Code, §§ 13400 et seq.)
3 (Moscone-Knox Professional Corporation Act)

4 21. Plaintiffs reallege and incorporate by reference paragraphs 1 through 20,
5 inclusive, of the Complaint as though fully set forth herein at length.

6 22. Defendant corporation Industrial Safety and Health, Inc., doing business as
7 Industrial On-Site Medics, has engaged in and is engaged in the business of providing
8 professional medical services to members of the public as the alter ego of and through their sole
9 shareholders, defendants Virginia Siegel and Zulema Garcia.

10 23. While the State of California does allow for the corporate practice of
11 medicine, it does so only under the strict provisions of the Moscone-Knox Professional
12 Corporation Act, the Medical Practice Act, and the professional regulations enacted for the
13 protection of the citizens of the state against persons who, without medical training and
14 professional licensing and professional ethical obligations, may exploit the practice of medicine
15 with impunity from these separate vital professional requirements.

16 **RELEVANT STATUTES**

17 24. Business and Professions Code section 2402 states as follows:

18 "The provisions of Section 2400 do not apply to a medical or podiatry
19 corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4
20 (commencing with Section 13400) of Division 3 of Title I of the Corporations Code) and this
21 article, when such corporation is in compliance with the requirements of these statutes and all
22 other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations
23 and the conduct of their affairs."

22 25. Business and Professions Code section 2408 states, in pertinent part, as
23 follows:

24 "Except as provided in Sections 13401.5 and 13403 of the Corporations Code,
25 each shareholder, director and officer of a medical or podiatry corporation . . . shall be a licensed
26 person as defined in Section 13401 of the Corporations Code."

26 26. Corporations Code section 13400 provides that Title 1, Division 3, Part 4 of
27 the Corporations Code (sections 13400 through 13410) shall be known as the "Moscone-Knox
28 Professional Corporation Act."

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27. Corporations Code section 13401 provides, in pertinent part, as follows:

"(a) 'Professional services' means any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code

"(b) 'Professional corporation' means a corporation organized under the General Corporation Law . . . which is engaged in rendering professional services in a single profession . . .

.....

"(d) 'Licensed person' means any natural person who is duly licensed under the provisions of the Business and Professions Code . . . to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee."

28. Corporations Code section 13401.5 provides, in pertinent part, as follows:

"Notwithstanding subdivision (d) of section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by these licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein

- (a) Medical corporation.
- (1) Licensed podiatrists.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed marriage, family, and child counselors.
- (6) Licensed clinical social workers.
- (7) Licensed physicians' assistants.
- (8) Licensed chiropractors."

OFFENSES CHARGED

29. Defendant corporation Industrial Safety and Health, Inc. does not qualify as a professional corporation under the provisions of the Moscone-Knox Professional Corporation Act (Corporations Code section 13400, et seq.).

30. Specifically, defendants have considered to evade, and defendant corporation has failed to comply with section 13401, subdivision (d), and section 13401.5, subdivision (a) of the Act, as well as Business and Professions Code section 2408, in that defendants Virginia Siegel and Zulema Garcia, who wholly own defendant corporation are not licensed physicians and surgeons. Defendants Virginia Siegel and Zulema Garcia are furthermore not even among the other licensed health care professionals allowed to own up to forty-nine percent of the shares

1 the following procedures or administer the following medications when such are
2 approved by the medical director of the local EMS agency and are included in the
written policies and procedures of the local EMS agency."

3 49.eHealth and Safety Code section 1798(a) states:e

4 "(a) The medical direction and management of an emergency medicale
5 services system shall be under the medical control of the medical director of the
6 local EMS agency. This medical control shall be maintained in accordance with
standards for medical control established by the authority."

7 50.eHealth and Safety Code section 1798.2 states:e

8 "The base hospital shall implement the policies and procedures established
9 by the local EMS agency and approved by the medical director of the local EMS
agency for medical direction of prehospital emergency medical care personnel."

10 51.eHealth and Safety Code section 1797.194 states in relevant part as follows:e

11 "The purpose of this section is to provide for the state licensure of EMT-P
12 personnel. Notwithstanding any provision of law, including, but not limited to,
sections 1797.208 and 1797.214, all of the following applies to EMT-P personnel:

13 "(e) Nothing in this section shall be construed to extend the scope of
14 practice of an EMT-P beyond prehospital settings, as defined by regulations of the
authority."

15 OFFENSES CHARGED

16 52.ePlaintiffs reallege and incorporate by reference paragraphs 1 through 51e
17 of the complaint as though set forth herein at length.

18e 53.eDefendant corporation Industrial Safety and Health, Inc., doing business ase
19 On-Site Medics, has engaged in and is engaged in the business of providing
20 nal medical services to members of the public. It does so in part by employing licensed
21 cs to perform the following services outside of an emergency setting and outside the
22 on and medical control of a medical director of an emergency medical services agency.
23 ces performed by defendant Siegel and defendants' paramedic employees without
24 rsonian supervision include, but are not limited to the following:

25 (a) Performing

26 (1)respirator physicals and fits:e

27 (2) pre-employment physicals:e

28 (3) drug testing:

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(4) lead monitoring; audiometric testing;

(5) spirometry testing.

(b) Defendant Siegel and defendants' paramedic employees have conspired to engage and have engaged in diagnosing, treating, counseling, and advising the sick and afflicted of this state without ever having been trained as medical assistants working under a physician and surgeon licensed in this state, in violation of Business and Professions Code sections 2069 and 2070.

(c) Defendant Siegel has falsely represented herself as a physician and surgeon in patient related medical records which acts constitute the commission of fraudulent, dishonest, or corrupt acts which are substantially related to the qualifications, functions, and duties of prehospital personnel.

(d) Defendant Siegel has engaged in and/or authorized other defendants to control the ordering, storing, distribution, and injection of dangerous drugs without physician supervision and outside the medical control of a medical director of an emergency medical services agency.

(e) Defendant Siegel and defendants' paramedic employees are engaged in and have engaged in the illegal and unauthorized release of confidential medical information of patients.

(f) Defendant Siegel has been and is providing medical services outside the medical control of a medical director of an emergency medical services agency.

54. Unless restrained and permanently enjoined, defendants and each of them will continue to engage in or will resume said aforementioned acts in violation of law as hereinabove set forth.

55. Plaintiffs have no adequate remedy at law to prevent defendants from engaging in the aforementioned alleged acts and practices.

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1 PRAYER

2 **WHEREFORE**, plaintiffs pray for relief as follows:

3 1. That defendants, and each of them, their officers, directors, employ
4 agents, representatives, successors, and assigns, and all other persons, corporations, or othe
5 entities acting under, through, or on behalf of defendants, be permanently restrained and
6 enjoined from engaging in or performing, directly or indirectly, any and all of the following

7 (a) Holding themselves out to the public of California or any state as being o
8 capable and competent to practice medicine and from treating, diagnosing,
9 counseling, aiding or assisting in the treating of any affliction, disease, ailment or
10 other physical or mental condition.

11 (b) Engaging licensed physicians and surgeons or any other licensed health
12 professionals such as paramedics for the purpose of providing medical services to
13 the public as part of an occupational health practice or any other type of medical
14 practice.

15 (c) Engaging in, either directly or indirectly, the unlicensed practice of o
16 medicine, individually or through corporations, in violation of Business and
17 Professions Code section 2052 and 2400, including, but not limited to, the
18 violations referred to in the First Cause of Action.

19 (d) Engaging in the unlicensed practice of medicine under a fictitious or o
20 assumed name or in any other way violating Business and Professions Code
21 section 2285.

22 (e) Engaging in the unlawful corporate practice of medicine in violation of o
23 the Moscone-Knox Professional Corporation Act (Corp. Code, § 13400, et seq.)
24 by practicing medicine without compliance with the statutes, rules, and
25 regulations set forth thereunder and under its auspices, including, but not limited
26 to, the violations referred to in the Second Cause of Action.

27 (f) Engaging in false or misleading advertising in violation of both
28 Business and Professions Code section 651 and sections 100145(a), 100173(b)