

EXHIBIT 2

**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.)

**Physician's and Surgeon's)
Certificate No. G74601)**

Respondent.)

File No. 03-2000-108170

DECISION

The attached Stipulated Settlement and Waiver is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 19, 2006.

IT IS SO ORDERED May 18, 2006.

MEDICAL BOARD OF CALIFORNIA

By 

**Steven Alexander, Chair
Panel A
Division of Medical Quality**

1 BILL LOCKYER, Attorney General
 of the State of California
 2 VIVIEN H. HARA
 Supervising Deputy Attorney General
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9 **BEFORE THE**
 10 **DIVISION OF MEDICAL QUALITY**
MEDICAL BOARD OF CALIFORNIA
 11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:
 13 JOSEPH F. BASILE, M.D.
 14 130 Coffee Road, Suite 7
 Modesto, CA 95355
 15 Physician's and Surgeon's Certificate
 No. G74601

Case No. 03-2000-108170
 OAH No. N2002050521

**STIPULATED SETTLEMENT AND
 WAIVER**

16 Respondent.

17
 18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
 19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Ron Joseph (Complainant) was the Executive Director of the Medical
 22 Board of California when this action commenced. Currently, David T. Thornton, is the
 23 Executive Director. This action was brought solely in their official capacities. Complainant in
 24 this matter is represented by Bill Lockyer, Attorney General of the State of California, by Jose R.
 25 Guerrero, Deputy Attorney General.

26 2. Respondent Joseph F. Basile, M.D., (Respondent), is represented in this
 27 proceeding by attorney Robert B. Zaro, Esq., whose address is 915 L Street, Suite 1240,
 28 Sacramento, CA 95814.

1 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
2 each and every right set forth above.

3 8. Respondent agrees that his Physician's and Surgeon's Certificate is subject
4 to discipline and he agrees to be bound by the Division's imposition of discipline as set forth in
5 the Disciplinary Order below.

6 CONTINGENCY

7 9. This stipulation shall be subject to approval by the Division of Medical
8 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
9 Medical Board of California may communicate directly with the Division regarding this
10 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
11 signing the stipulation, Respondent understands and agrees that he may not withdraw his
12 agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon
13 it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
14 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
15 be inadmissible in any legal action between the parties, and the Division shall not be disqualified
16 from further action by having considered this matter.

17 10. The parties understand and agree that facsimile copies of this Stipulated
18 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
19 force and effect as the originals.

20 11. In consideration of the foregoing admissions and stipulations, the parties
21 agree that the Division may, without further notice or formal proceeding, issue and enter the
22 following Disciplinary Order:

23
24 DISCIPLINARY ORDER

25 THE BOARD HEREBY ADOPTS the proposed written decision of
26 Administrative Law Judge, Jonathan Lew, attached hereto as Exhibit B, except for paragraph 10
27 (ten) of the legal conclusions which sets forth the penalty and the original Penalty Order at page
28 13 of the written proposed decision. THE PENALTY IS HEREBY INCREASED BY AN

1 ADDITIONAL ONE YEAR. IT IS THEREFORE ORDERED that Physician's and Surgeon's
2 Certificate No. G74601 Issued to Respondent Joseph F. Basile, M.D. is revoked. However, the
3 revocation is stayed and Respondent is placed on probation for four (4) years on the following
4 terms and conditions:

5 STANDARD CONDITIONS

6 1. NOTIFICATION Prior to engaging in the practice of medicine the
7 respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the
8 Chief Executive Officer at every hospital where privileges or membership are extended to
9 respondent, at any other facility where respondent engages in the practice of medicine, including
10 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
11 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
12 Respondent shall submit proof of compliance to the Division or its designee within 15 calendar
13 days. This condition shall apply to any change(s) in hospitals, other facilities or insurance
14 carrier.

15 2. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
16 respondent is prohibited from supervising physician assistants.

17 3. OBEY ALL LAWS Respondent shall obey all federal, state and local
18 laws, all rules governing the practice of medicine in California, and remain in full compliance
19 with any court ordered criminal probation, payments and other orders.

20 4. QUARTERLY DECLARATIONS Respondent shall submit quarterly
21 declarations under penalty of perjury on forms provided by the Division, stating whether there
22 has been compliance with all the conditions of probation. Respondent shall submit quarterly
23 declarations not later than ten (10) calendar days after the end of the preceding quarter.

24 5. PROBATION UNIT COMPLIANCE Respondent shall comply with the
25 Division's probation unit. Respondent shall, at all times, keep the Division informed of
26 respondent's business and residence addresses. Changes of such addresses shall be immediately
27 communicated in writing to the Division or its designee. Under no circumstances shall a Post
28 Office Box serve as an address of record, except as allowed by Business and Professions Code

1 section 2021(b).

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

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

8 6. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent
9 shall be available in person for interviews at respondent's place of business or at the probation
10 unit office, with the Division or its designee upon request at various intervals and either with or
11 without prior notice throughout the term of probation.

12 7. RESIDING OR PRACTICING OUT OF STATE In the event respondent
13 should leave the State of California to reside or to practice respondent shall notify the Division or
14 its designee in writing within thirty (30) calendar days prior to the dates of departure and return.
15 Non-practice is defined as any period of time exceeding thirty (30) calendar days in which
16 respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business
17 and Professions Code.

18 All time spent in an intensive training program outside the State of California
19 which has been approved by the Division or its designee shall be considered as time spent in the
20 practice of medicine within the State. A Board-ordered suspension of practice shall not be
21 considered as a period of non-practice. Periods of temporary or permanent residence or practice
22 outside California will not apply to the reduction of the probationary term. Periods of temporary
23 or permanent residence or practice outside California will relieve respondent of the responsibility
24 to comply with the probationary terms and conditions with the exception of this condition and
25 the following terms and conditions of probation: Obey All Laws; and Probation Unit
26 Compliance.

27 Respondent's license shall be automatically canceled if respondent's periods of
28 temporary or permanent residence or practice outside California totals two years. However,

1 respondent's license shall not be canceled as long as respondent is residing and practicing
2 medicine in another state of the United States and is on active probation with the medical
3 licensing authority of that state, in which case the two year period shall begin on the date
4 probation is completed or terminated in that state.

5 8. FAILURE TO PRACTICE MEDICINE-CALIFORNIA RESIDENT In
6 the event respondent resides in the State of California and for any reason respondent stops
7 practicing medicine in California, respondent shall notify the Division or its designee in writing
8 within thirty (30) calendar days prior to the dates of non-practice and return to practice. Any
9 period of non-practice within California, as defined in this condition, will not apply to the
10 reduction of the probationary term and does not relieve respondent of the responsibility to
11 comply with the terms and conditions of probation. Non-practice is defined as any period of time
12 exceeding thirty (30) calendar days in which the respondent is not engaging in any activities
13 defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

21 9. VIOLATION OF PROBATION Failure to fully comply with any term or
22 condition of probation is a violation of probation. If respondent violates probation in any respect,
23 the Division, after giving respondent notice and the opportunity to be heard, may revoke
24 probation and carry out the disciplinary order that was stayed. If an accusation or Petition to
25 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,
26 the Division shall have continuing jurisdiction until the matter is final, and the period of
27 probation shall be extended until the matter is final.

28 10. COST RECOVERY Within 90 (ninety) calendar days from the effective

R.E

1 date of the Decision or the other period agreed to by the Division or its designee, respondent shall
2 reimburse the Division the amount of \$4,000 (four thousand dollars) for its investigative and
3 prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not
4 relieve respondent his obligation to reimburse the Division for its costs.

5 11. LICENSE SURRENDER Following the effective date of this Decision, if
6 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
7 the terms and conditions of probation, respondent may request the voluntary surrender of
8 respondent's license. The Division reserves the right to evaluate respondent's request and to
9 exercise its discretion whether or not to grant the request, or to take any other action deemed
10 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
11 respondent shall within fifteen (15) calendar days deliver respondent's wallet and wall certificate
12 to the Division or its designee and respondent shall no longer practice medicine. Respondent
13 will no longer be subject to the terms and conditions of probation and the surrender of
14 respondent's license shall be deemed disciplinary action. If respondent re-applies for a medical
15 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16 12. PROBATION MONITORING COSTS Respondent shall pay the costs
17 associated with probation monitoring each and every year of probation, as designated by the
18 Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical
19 Board of California and delivered to the Division or its designee no later than January 31 of each
20 calendar year. Failure to pay costs within thirty (30) calendar days of the due date shall
21 constitute a violation of probation.

22 13. COMPLETION OF PROBATION Respondent shall comply with all
23 financial obligations (probation costs, etc.) no later than one hundred twenty (120) calendar days
24 prior to the completion of probation. Upon successful completion of probation, respondent's
25 certificate shall be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert B. Zaro, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Division of Medical Quality, Medical Board of California.

DATED: January 10, 2006

Joseph F. Basile, M.D.
JOSEPH F. BASILE, M.D.
Respondent

I have read and fully discussed with Respondent Joseph F. Basile, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: Jan 10, 2006

Robert B. Zaro
ROBERT B. ZARO
Attorney for Respondent

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EXHIBIT B
Administrative Law Judge Jonathan Lew's Proposed Decision

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).

Complainant contends that respondent engaged in general unprofessional conduct, that he aided and abetted the unlicensed practice of medicine, that he failed to maintain adequate and accurate medical records, that he made false statements and was dishonest, and that he engaged in advertising without the use of his own name and/or without a fictitious name permit issued by the Board.¹ Respondent acknowledges his error in failing to obtain a fictitious name permit from the Board as required. He contests all other allegations made against him.

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.

¹ Seven causes for disciplinary action were pled in the Second Amended Accusation. Complainant dismissed the third cause (Unlicensed Corporate Practice of Medicine) and the sixth cause (Conspiracy With Unlicensed Person) at the time of hearing.

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/cm^2). 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. Respondent would be available to her at those times by telephone or pager so that she could discuss any patient treatment matters with him. After VCEC moved to Modesto, Vina Basile ceased providing PhotoDerm Vasculight treatment to patients. Respondent and VCEC opted instead to hire registered nurses to operate the machine.

7. Respondent did not apply for nor did he receive a fictitious name permit from the Board to use the name "Vein and Cosmetic Enhancement Center." He did file a fictitious business name statement with the Monterey County Clerk for "The Vein & Cosmetic Enhancement Center of Monterey" on December 23, 1998. Respondent was unaware of the requirement that he also have a fictitious name permit issued by the Board and he apparently complied with Board requirements when made aware of his obligation. There was no evidence that patients were unaware of respondent's involvement or affiliation with VCEC. His name was prominently featured on a brochure detailing information about VCEC. His name also appeared on a separate VCEC list of fees for different services.

Patient S.S.

8. Patient S.S. came to VCEC on February 19, 1999, to inquire about treatment/removal of varicose veins for aesthetic reasons. She met with both respondent and Vina Basile. She was shown a video about the PhotoDerm Vasculight treatment and decided to go forward with the procedure. Her Fitzpatrick Skin Type was determined to be category III and a test strip was run to confirm that her skin would respond to treatment. On February 20, she was provided with an informed consent form which she reviewed and signed. The form specified: "I understand that there is a 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." Her first treatment was on February 20, 1999. Patient S.S. received laser and IPL treatment that day on the front and back of her legs. Respondent set the fluence at 125.2 J/cm² and the pulse duration at 8.5. Respondent and Vina Basile were both present during the procedure. Notes for that treatment indicate "Cat-scratch effect present throughout" which was the desired result. A second appointment was scheduled for patient S.S. for March 19, 1999, for additional treatment. It is usual to wait 4 - 6 weeks between treatments.

Patient S.S. returned on March 19. Records for that date indicate that she was treated with the laser on the front of both legs. There is a handwritten notation by respondent that she had developed blisters on the previous treatment. Respondent reduced the fluence to 112 J/cm² and increased the pulse duration to 10. He made these adjustments in response to her comments about blistering. The resulting change reduced the impact upon her blood vessels by at least 25 percent, an appropriate adjustment in her case.

Patient S.S. was also treated on March 22, 1999, this time on the back of her legs. The laser settings were identical to that used on March 19. She experienced severe pain and was told that it was because the back of her legs were more sensitive. She endured the pain until it became too much and she then asked to have the procedure stopped. Respondent avers that he provided the treatment for patient S.S. on March 22. As a result of that treatment patient S.S. was blistered and burned on the back of both legs. Three other patients were burned that same day, including Vina Basile. Respondent contacted the manufacturer to complain. Representatives of ESC Medical Systems came to the office on May 6, 1999. Respondent called patient S.S. to see if she could join them and show her injuries to the representatives. Respondent was advised that there were two incompatible software versions

within the machine's computer. A loaner machine was provided to him and the PhotoDerm Vasculight machine was removed, repaired and returned. There have been no similar problems with the machine since. It does appear that the problems that occurred on March 22, 1999, were attributable solely to machine malfunction. There was no evidence of operator error. The settings used for patient S.S. were entirely appropriate.

9. Patient S.S. believes she was burned on March 19, 1999, and she has no recollection of being treated on March 22. She believes Vina Basile was the clinician at the time that she was burned. Patient S.S. was contacted by a VCEC employee, Ronnie, on March 25, 1999. He noted in her records that she reported being burned and blistered on all areas treated and that she was very upset. On April 21, 1999, respondent prescribed Keflex, 500 mg, for her wounds. She was advised that the redness of her burns, but not the scarring, could be minimized by additional IPL treatment. Vena Basile was involved in this aspect of her IPL treatment. Patient S.S. received IPL treatment on June 4, and again on July 16 and 28, 1999. Respondent also performed sclerotherapy on both of patient S.S.'s lower extremities on July 16, 1999. The final IPL treatment was on August 26, 1999. Both respondent and Vena Basile were involved.

10. On October 17, 2000, patient S.S. appeared in Monterey County Superior Court, Small Claims Division (Case No. MAR 115369) seeking compensation for the burns received during her treatment with respondent. Respondent submitted a declaration that he signed under penalty of perjury in which he stated: "Vina Basile, my spouse, is employed by me as the office manager and technician. Mrs. Basile is a trained technician and administers Photoderm @PL to patients for treatment of vascular lesions. Mrs. Basile administered Photoderm @PL to plaintiff [patient S.S.] on each of the six occasions when plaintiff underwent the treatment, including the March 22, 1999 session that plaintiff claims left her with burns."

11. On November 2, 2000, the Monterey County Medical Society sent respondent a letter advising him that only licensed individuals could treat patients with an IPL device. Respondent sought legal counsel on this issue and was led to believe that it was just one opinion in what was still a gray area. He avers that he had also called the Board earlier in January 1999, and that he was advised at that time that there were no regulations governing this area. By February 2001, he determined to close the Carmel VCEC office and have Vina Basile cease further treatment of patients. He arranged to have a registered nurse operate the machine after it was moved to Modesto. He decided not to hire a registered nurse while VCEC was still in Carmel because he knew that he would soon be moving the office to Modesto.

Dishonesty/Making False Statements/General Unprofessional Conduct

12. Complainant contends that respondent engaged in dishonest and corrupt practices when he signed a declaration under penalty of perjury in the Monterey County Small Claims Court indicating that Vina Basile performed all treatments on patient S.S. Complainant also believes that respondent made false entries into the medical records for

patient S.S. when he made a handwritten entry for March 19, 1999, that she had developed blisters during her previous treatment. This entry was not signed or dated. And complainant contends that respondent made a false entry in patient S.S.'s medical records indicating that she had been treated on March 22, 1999.

These allegations were not supported by the evidence. The declaration submitted in small claims court was drafted by an attorney retained by respondent and given to him for review and signature at the time of the small claims hearing. Respondent avers that he did not review it carefully before he signed it and that he was not aware that it stated that Vina Basile, and not respondent, had treated patient S.S. He points out that the issue in the small claims action had nothing to do with who treated patient S.S. Rather, the small claims case was based on negligence theory and respondent's defense was that injury to patient S.S. was caused by equipment malfunction and not by any treatment that fell below the standard of care. His defense had nothing to do with who treated patient S.S. and he had no apparent motive at that time to make a false statement about his involvement, or lack of involvement, in her care. The error was not material to the small claims court action. Respondent consistently stated during the Board's investigation, and also at hearing, that he treated patient S.S. at the time she was burned. It does not appear that respondent knew that the declaration that he signed was false when he signed it. Even if he was careless or should have known that the declaration was inaccurate, allegations relating to dishonesty and the making of false statements must be supported by evidence that the person knew that the statements were false when made. Complainant has not met this burden.

13. It was not established that respondent's handwritten entry into the computer generated records for patient S.S.'s March 19, 1999 treatment constituted dishonesty or the making of false statements. Respondent wrote on that date that patient S.S. had developed blisters on the previous treatment. His comments related back to her February 20, 1999 treatment. Better practice would be for him to have also signed and dated his notations by hand, but his failure to do so does not mean that he was dishonest or that he made false statements. On March 19, 1999, respondent did reduce the fluence from 125.2 to 112.0 J/cm², and he increased the pulse duration from 8.5 to 10. These actions were in apparent response to information reported to him from patient S.S. Her developing blisters during her previous treatment would have prompted such adjustments. Respondent explains that he handwrote the entry in the box reserved for notes during her March 19, 1999 treatment. He did not feel it was necessary to also initial or date his notes. His handwriting was recognizable to all in his office. Respondent provided a copy of patient S.S.'s records to her at her request. Her copy did not contain these handwritten notes. Respondent explains that this was because she was not provided a photocopy of records, but instead a new record of her treatment was printed off data stored within the machine's computer.

14. It was also not established that respondent made dishonest or false statements regarding treatment of patient S.S. on March 22, 1999. Complainant relies primarily upon patient S.S.'s recollection of being treated only on March 19, 1999, and the normal four to six week interval between treatments. Records for March 19 show that patient S.S. was treated only on the front of her legs. The records include an illustration of where treatment

was administered on a 1 ½" x 2" figurine. The left and right thighs and shanks are pictured and referenced on March 19, while the back of the left and right thighs and calves are pictured and referenced in the March 22 records. Others, including Vina Basile, were burned on March 22 and this appears to be the only date that patients were burned during treatment. Phone calls were initiated by the office to patients treated on March 22, 1999, including to patient S.S. She was contacted by VCEC employee Ronnie who noted in her patient records that he contacted her on March 25, 1999, and that she had been "burned blistered in all areas treated." Patient S.S. has only complained of injury to the back of her legs, consistent with her being treated on March 22, 1999.

By reason of the above, it was not established that respondent engaged in dishonesty, that he made false entries into the medical records for patient S.S. or that he otherwise engaged in general unprofessional conduct.

Inadequate and/or Inaccurate Medical Records

15. Complainant alleges that respondent failed to maintain custody and control of patient medical records, that respondent failed to create adequate medical records of patients being medically evaluated and given vein treatments, that respondent's handwritten medical record entries for March 19, 1999, were inadequate and that his March 22, 1999 medical records were false.

It was not established that respondent failed to maintain custody and control of patient medical records. Respondent testified that he retained control and custody of all patient medical records and that he was unaware of medical records ever being disseminated to unauthorized persons. When the VCEC Carmel office closed, patient medical records were moved to Modesto. They were not housed with Vina Basile nor did they become part of VCEC's corporate records. There was no evidence to the contrary. There was also no evidence that he failed to create adequate medical records of patients being medically evaluated and treated for vein treatments.

Respondent's handwritten medical record entries for March 19, 1999, were discussed in Finding 13 with regard to dishonesty/false statement allegations. Complainant also contends that the standard of practice for medical recordkeeping requires that any subsequent entries be dated and at least initialed if not signed. Complainant is not satisfied that handwritten entries made within the confines of a computer generated response field are appropriate because a subsequent treating clinician would not absolutely correlate the handwritten notation with the computer generated date. Complainant called as its only medical expert witness John Stuart Nelson, M.D., Ph.D. He is a professor within the Departments of Surgery, Dermatology and Biomedical Engineering at the University of California, Irvine. He is also the Associate Medical Director of the Beckman Laser Institute and Medical Clinic. Dr. Nelson notes that the standard of care requires physicians to document within medical records what the IPL and laser treatment parameters were, the date and time of treatment, and to sign it. If subsequent notations are made, the physician needs to put the date and time on the record where the notations are made, and then initial the

comments to show who was responsible for making the modifications. Dating and signing are required in every case. Dr. Nelson was shown respondent's March 19, 1999 handwritten entries. Because he does not know who wrote it, he cannot say whether it falls within the standard of care. Respondent characterizes his entries as being contemporaneous with the March 19, 1999 treatment, not subsequent notations, and purposely placed within the March 19 computer-generated response field.

It was not established that respondent made the questioned entries subsequent to the March 19, 1999 treatment. Had this been the case a handwritten date and author's initials/signature would have been required. Dr. Nelson was unable to comment on whether the entry fell below the standard of care. For these reasons it was not established that respondent failed to make/maintain proper medical records with regard to the March 19, 1999 handwritten entry. Additional allegations regarding the falsity of the March 22, 1999 medical records were previously addressed above in Finding 14.

Aiding and Abetting the Unlicensed Practice of Medicine

16. This is a question of law, with further discussion reserved for Legal Conclusions. Prior to February 2001, respondent did not know or believe that only licensed individuals could use the PhotoDerm Vasculight machine. He relied largely upon information received from the machine's manufacturer, ESC Medical Systems. Mitchel Paul Goldman, M.D., testified as an expert witness on behalf of respondent. Dr. Goldman is board certified in dermatology and cosmetic surgery. He is an Associate Clinical Professor in Medicine/Dermatology at the University of California, San Diego Medical Center. Dr. Goldman did much of the development and investigation work on IPL and he started ESC Medical Systems, now called Lumenis. He is licensed to practice medicine in six states, including California.

Dr. Goldman notes that there was confusion in California in the late 1990s over whether unlicensed individuals could operate the machines. California was unique in that other states allowed unlicensed individuals to administer IPL. In Dr. Goldman's own practice and other medical practices in California of which he was aware, medical assistants were administering IPL and similar treatments such as electrolysis. Dr. Goldman asked the Board for guidance on this issue and he received a response sometime in 2000 indicating that the Board viewed IPL as a laser device. He believes that there was no clear guidance on this issue until around the time that respondent changed his practice in early 2001.²

Cost Recovery.

² Complainant made a motion, post hearing, that official notice be taken of the Board's January 1998 Action Report which sets forth the Board's view that only licensed personnel may use lasers and that this does not include medical assistants. This motion was denied as untimely. There was no evidence at hearing that respondent was made aware of the information contained in this Action Report over the relevant period that he allowed Vina Basile to administer IPL/laser treatments.

17. The Board has incurred \$4,410.82 as its investigation costs. This is for the four-year period 2000 – 2003. An additional \$1,425 was incurred for review/hearing preparation and \$40.35 for transcribing.³ The Board's total request is \$5,876 as reasonable costs in connection with its investigation and prosecution of this matter. No costs for attorney fees incurred by the Board were included in the record.

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:

³ Complainant withdrew requests for \$2535.04 in expert costs at the time of hearing.

...[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.

6. Advertising Without Use of Name or Fictitious Name Permit. Cause for disciplinary action exists under Business and Professions Code sections 2272 and/or 2285, by reason of the matters set forth in Finding 7. Respondent engaged in advertising without the use of his own name and/or without a fictitious name permit issued by the Board.

7. Dishonesty/Making False Statements/General Unprofessional Conduct. No cause for disciplinary action exists under Business and Professions Code sections 2234, 2261 and 2234, subdivision (e), by reason of the matters set forth in Findings 12 through 14.

8. Inadequate and/or Inaccurate Medical Records. No cause for disciplinary action exists under Business and Professions Code section 2266, by reason of the matters set forth in Finding 15.

9. Under Business and Professions Code section 125.3, the Board may request the administrative law judge to direct any licentiate found to have committed a violation of the licensing act to pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the case. The Board has incurred costs of \$5,876 in connection with its

investigation and enforcement of this case. The Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the licensee's "subjective good faith belief in the merits of his or her position" and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Such factors have been considered in this matter. Respondent has successfully defended against allegations based on dishonesty, making false statements, general unprofessional conduct and inadequate and/or inaccurate medical records. The focus of this case was largely on allegations relating to his aiding and abetting the unlicensed practice of medicine, an issue to which he raised a colorable challenge. An adjustment of costs to \$4,000 would fairly and equitably account for these several factors. Documentation of attorney costs was not submitted.

10. Board disciplinary guidelines for aiding and abetting the unlicensed practice of medicine call for a minimum penalty of stayed revocation and five years probation. At the time that the offense occurred, Board disciplinary guidelines called for a minimum penalty of stayed revocation and three years probation for this offense. The matters set forth in Findings 11 and 16 were considered. There may have been some confusion over whether Vina Basile could lawfully provide IPL/laser treatments to patients, but by November 2000, respondent was made aware of continued concerns over this practice by the Monterey County Medical Society, and he should have sought definitive guidance from the Board at that time. When he did determine that only licensed personnel should operate the machine, he deferred hiring a registered nurse until after he moved to Modesto. He allowed Vina Basile to perform IPL/laser treatment at a time when he understood her authority to do so was, at best, uncertain. He also allowed her to provide such treatment when he was absent from the facility. Disciplinary action is appropriate under these circumstances. Protection of the public does not require more than the minimum penalty of stayed revocation and three years probation. Respondent's violation of Business and Professions Code section 2285 (Fictitious Name Violation) is viewed as a technical violation.

ORDER

Physician's and Surgeon's Certificate No. G-74601 issued to respondent Joseph F. Basile, M.D. is revoked pursuant to Legal Conclusions 5 and 6, jointly; and Legal Conclusion 5 individually. However, revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Notification. Prior to engaging in the practice of medicine Respondent shall provide a true copy of the Decision and Accusation 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 Division or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities or insurance carrier.

2. Supervision of Physician Assistants. During probation, respondent is prohibited from supervising physician assistants.
3. Obey All Laws. 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.
4. Quarterly Declarations. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, 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.
5. Probation Unit Compliance. Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division 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 Division 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.

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

7. Residing or Practicing Out-of-State. In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division 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 Division 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.

8. Failure to Practice Medicine - California Resident. In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division 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 any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division 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 cancelled 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.


9. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, 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 Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
10. Cost Recovery. Within 90 calendar days from the effective date of the Decision or other period agreed to by the Division or its designee, respondent shall reimburse the Division the amount of \$4,000 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve respondent his obligation to reimburse the Division for its costs.
11. License Surrender. 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 Division 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 Division 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.

12. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division 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.
13. Completion of Probation. Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

DATED: July 16, 2004



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings