

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.,

Respondent.

Cancellation No.:92044697

Filed: March 5, 2009

Certificate of Facsimile Transmission

I hereby certify that this correspondence (Pages 1-10, excluding cover page) of the Opposition of the Motion to Compel, Motion for a Protective Order and Motion to Stay as well as Exhibit (pages 1 through 57) is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below.

On March 5, 2009.

Sincerely,

Jeannette Martello,
M.D.

Jeannette Martello, M.D.
Respondent In Pro Per

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JEANNETTE MARTELLO
PRESIDENT OF JEANNETTE MARTELLO, M.D., A PROFESSIONAL CORPORATION
701 Fremont Avenue
South Pasadena, CA 91030
Telephone: (626) 403-1747
Facsimile: (626) 403-1784

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

ACM Enterprises, Inc.)	Cancel No. 92044697
Petitioner)	Filed: March 5, 2009
Against)	RESPONDENT'S OPPOSITION TO
)	MOTION TO COMPEL
)	MOTION FOR A PROTECTIVE ORDER
)	MOTION TO STAY DISCOVERY
Martello, Jeannette, M.D.)	
Respondent)	

Cancellation No. 92044697
Opp. to Motion to Compel
Motion for a Protective Order
Motion to Stay Discovery
COVER PAGE

1 Déjà vu. Petitioner's attorney has used the exact same bad faith, dilatory
2 tactics at the last minute on three separate occasions. Delay tactic number 1: On
3 December 22, 2005, an extension of time was granted. Plaintiff's trial testimony period was to
4 start on April 22, 2006. A Motion to Compel Discovery was filed by Petitioner on
5 April 21, 2006 after a single last-minute phone call was made to Respondent's attorney on
6 April 20, 2006. Delay tactic number 2: Over a year later, an extension of time was requested
7 on June 30, 2007. Plaintiff's trial testimony period was set to start on August 4, 2007. Plaintiff
8 filed a Motion for Summary Judgment on Friday, August 3, 2007 with exhibits that were
9 mailed separately on Saturday August 4, 2007 replete with a Certificate of Mailing signed by
10 attorney David Hong in accordance with 37 CFR § 2.197(a)(1)(A)(ii) that "the person signing
11 the certificate should have reasonable basis to expect that the correspondence would be mailed
12 or transmitted on or before the date indicated." This is incredible considering the fact that
13 page 12 of Hong's 216 pages of exhibits was printed off from the TARR web server at
14 19:03:12 ET 4:03 p.m. PST) on Friday, August 3, 2007 whilst the mailing post office closed
15 at 4:30 p.m. on August 3, 2007. The exhibits for the Motion for Summary Judgment were
16 received in Virginia on Monday, August 6, 2007 at 11:28 a.m. Delay tactic number 3: On
17 September 17, 2008, a three month extension of time was granted. The Plaintiff's trial
18 testimony period was set to start on February 15, 2009. On February 14, 2009, Petitioner filed
19 this Motion to Compel.

20 This Second Motion to Compel presents yet another refrain in Petitioner's ongoing effort to
21 engage Respondent in frivolous motion practice over irrelevant time-consuming discovery
22 disputes. Petitioner has attempted to divert resources and attention away from the fact that
23 Petitioner ACM has absolutely no standing. This Motion for a Protective Order and for a Motion
24 to Stay Discovery to review a dispositive Motion for Summary Judgment is germane to the
25 present Motion to Compel. Respondent has recently discovered that Petitioner had no standing
26 to bring this Petition for Cancellation to the Trademark Trial and Appeal Board in the first place
27 and Petitioner still has no standing to this day. This newly discovered evidence will render the
28

1 Motion to Compel as well as all other proceedings moot once the Trademark Trial and Appeal
2 Board has had a chance to review the evidence submitted with the dispositive Motion for
3 Summary Judgment.

4 Petitioner's Motion to Compel should be denied because further discovery would be
5 unduly burdensome and oppressive. Furthermore, Respondent believes that the discovery
6 requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26].
7 See *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001). Respondent
8 respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since
9 Respondent has discovered through newly revealed evidence that Petitioner lacked standing to
10 file the initial Petition for Cancellation in 2005. Petitioner lacks standing to this day. Therefore,
11 all Discovery that Petitioner seeks is the fruit of the same ill-begotten tree of deceit and fraud in
12 its initial filing of the Petition for Cancellation with the Trademark Trial and Appeal Board.

13 The Trademark Trial and Appeal Board has been more than patient in granting numerous
14 extensions of time. In order to prevent further waste of the Trademark Trial and Appeal Board's
15 time, Respondent respectfully requests a Motion for a Protective Order as well as a Motion to
16 Stay Discovery so that the Trademark Trial and Appeal Board may have a chance to review and
17 decide upon a dispositive Motion for Summary Judgment. The fact that the discovery period
18 would have ended within mere hours if Petitioner had not filed this Motion to Compel argues
19 that this stay would not be prejudicial to the Petitioner. This Motion for Summary Judgment is
20 germane to the present Motion to Compel since Respondent has recently discovered that
21 Petitioner had no standing to bring this Petition for Cancellation to the Trademark Trial and
22 Appeal Board in the first place. This newly discovered evidence will render the Motion to
23 Compel as well as all other proceedings moot once the Trademark Trial and Appeal Board has
24 had a chance to review the evidence submitted with the Motion for Summary Judgment.

25 Petitioner has forced Respondent to go on a wild goose chase to ferret out a sham Berger
26 Medical Corporation by failing to produce complete documentation regarding the business
27 relationship between Petitioner and Dr. Saul Berger. This illegal business relationship was
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1 documented in a Facilities and Management Services Agreement that was 14 pages in length.
2 Pages 1 and 14 were provided to Respondent with a redacted page 4 that was produced after
3 much prodding. (Exhibit, pages 1 through 9). This bogus Berger Medical Corporation was
4 formed to break California law, specifically the Moscone Knox Act that governs professional
5 corporations. Respondent has had to independently hire agencies to obtain California Secretary
6 of State documents on a rush basis so as to unveil the extent to which Petitioner has broken laws
7 as well as to unveil the fact that Petitioner had absolutely no standing to have brought forth this
8 Petition for Cancellation in the first place. Respondent has expended in excess of \$ 30,000 on
9 attorney's fees in this case in order to defend Respondent's Registration. It would be prejudicial
10 to Respondent if this Motion for Summary Judgment were not reviewed. Furthermore, it is in
11 the interest of justice and in the interest of the economics of time that the Trademark Trial and
12 Appeal Board stay discovery and review this dispositive Motion for Summary Judgment.

13 **MOTIVE FOR BAD FAITH AND DILATORY TACTICS**

14 The motives and reasons for Petitioner's conduct via these bad faith dilatory actions
15 became apparent only after Respondent completed arduous discovery which revealed that
16 Petitioner has never had standing to file a Petition for Cancellation. Petitioner's counsel had
17 been uncooperative in producing information that would have allowed this discovery to have
18 occurred at an earlier point in the proceeding. (Exhibit, pages 1 through 9). Petitioner ACM is
19 not a professional corporation. Petitioner ACM is not a licensed practitioner. Therefore,
20 according to California Business and Professions Code Sections 2285 and 2415, Petitioner has
21 been illegally using the name Skin Deep Laser Med Spa in violation of these codes. (Exhibit,
22 pages 10 through 13). It follows that Petitioner had no standing and continues to not have
23 standing to this day. According to the Medical Board of California, a lay person can not be a
24 partial owner of a fictitious name permit (question 17). Fictitious name permits can only be
25 issued to professional medical corporations (question 18) and physicians may only be partners
26 with other physicians (question 20). Additionally, fictitious name permits are not transferrable
27 (question 14). (Exhibit, pages 34 through 44)

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1 manipulated the wording of his questions so that an interrogatory could instead be viewed as an
2 admission instead (since there is no statutory limitation on the number of requests for admissions
3 a party can pose to another). Since the Trademark Trial and Appeal Board has proposed the
4 limitation of interrogatories to 25; limitation of admissions to 25 and document production to 15
5 items (although these limitations are not in effect at this time), it appears that these are the
6 numbers that the Trademark Trial and Appeal Board appear to be reasonable to accomplish
7 discovery. Needless to say, Respondent has a good faith belief that the discovery requested is
8 unreasonably cumulative, irrelevant or duplicative, etc. [Fed.R.Civ.P. 26]. *See Red Wing Co. v.*
9 *J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).

10 The burden is on the party seeking the information to establish why it is relevant.
11 *See Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861, 1863(TTAB 2001). Petitioner's
12 attorney David Hong has never been able to adequately explain why the answers to the
13 interrogatories and admissions that he compels in this Motion to Compel are relevant. On page
14 three of his February 28, 2007 letter addressed to Respondent's attorney Brandon Tesser, he
15 wrote, "I will need to follow up on our reasons why these questions deal with discoverable
16 topics for this instant proceeding and require a response." (Exhibit, pages 45 through 47).
17 If attorney Hong needed to get back to Respondent's attorney Tesser on "our reasons why these
18 questions deal with discoverable topics", there is no good faith legal basis for this discovery.
19 Over one month later, on March 21, 2007, Petitioner's counsel answered Respondent's counsel's
20 question regarding the relevancy of the discovery material. In his long-winded ten page letter
21 replete with circular reasoning and voluminous citations, Petitioner's attorney Hong answered
22 what he believed the relevancy was for the discovery sought. (Exhibit, pages 48 through 57).

23 Petitioner has never met his burden to show the relevancy of the discovery sought.
24 Nevertheless, Respondent, in good faith, admitted to requests for admissions numbers 50 and 63.

25 **MOTION TO COMPEL ANSWERS TO INTERROGATORIES**

26 For over three years, Petitioner's attorney David Hong has known the identity and
27 location of Sara Herrick. Attorney David Hong has contacted Sara Herrick via telephone at her
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1 place of business in the past. The Interrogatories that Petitioner's attorney has requested involve
2 information that is available and "obtainable from some other source that is more convenient",
3 namely from Sara Herrick. See TBMP 402.02. Over these three long years, Petitioner could
4 have easily noticed and deposed Sara Herrick for a discovery deposition. Not once has Petitioner
5 done so or even attempted to do so. Nevertheless, the requests for answers to interrogatories 21
6 to 23 are irrelevant and moot since Respondent's first legal use anywhere and first legal use in
7 interstate commerce predates Petitioner's alleged date of illegal first use anywhere and illegal
8 first use in interstate commerce, regardless of the assignment of Sara Herrick's common law
9 rights in Skin Deep Skin Care.

10 **MOTION TO COMPEL ADMISSIONS**

11 Discovery is limited to obtaining discovery regarding any matter that is relevant to the
12 claim or defense of any party. The following admissions are not reasonably calculated to lead to
13 the discovery of admissible evidence.

14
15 Request for Admissions 21 through 23 ask for admissions regarding whether or not
16 Respondent believes that microdermabrasion, treatment of acne and cleansing and exfoliation of
17 the skin are categorized as health spa services. These requests for admissions are irrelevant and
18 are not reasonably calculated to lead to the discovery of admissible evidence. The requests are
19 overbroad and improperly seek expert opinions and conclusions. The requests constitute
20 incomplete and/or improper hypothetical questions. The requests call for speculation to the
21 extent they seek information outside Respondent's personal knowledge.

22 RFA 21. Admit that healthspa services include microdermabrasion.

23 RFA 22. Admit that healthspa services include treatment for acne.

24 RFA 23. Admit that healthspa services include cleansing and exfoliation
25 of the skin.

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1 Request for Admission 50. This request for admission is irrelevant and is not reasonably
2 calculated to lead to the discovery of admissible evidence. Additionally, the request is vague and
3 ambiguous as to the phrase "type of entertainment service."

4 RFA 50. Admit that the "Skin Deep" radio program is a type of entertainment service.
5

6 Request for Admission 51: This request for admission is irrelevant and is not reasonably
7 calculated to lead to the discovery of admissible evidence. The request is overbroad and
8 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
9 specific as to which "patient" is being referred to.

10 RFA 51: "Admit that Respondent Jeannette Martello as a licensed California physician
11 must perform a good faith in-person examination of a patient or of the patient's records before
12 providing medical or physician services to the patient."
13

14 Request for Admission 52: This request for admission is irrelevant and is not reasonably
15 calculated to lead to the discovery of admissible evidence. The request is overbroad and
16 constitutes an incomplete and/or improper hypothetical question. The request is vague,
17 ambiguous and non-specific as to which "caller" is being referred to.

18 RFA 52: "Admit during Respondent Jeannette Martello's "Skin Deep" radio program,
19 the Respondent cannot confirm whether a caller to her program is reporting accurate or truthful
20 information during the radio show."
21

22 Request for Admission 53: This request for admission is irrelevant and is not reasonably
23 calculated to lead to the discovery of admissible evidence. The request is overbroad and
24 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
25 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
26 specific as to which "patient" is being referred to.
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1 RFA 53: "Admit that a good faith in-person examination of a patient enhances the
2 opportunity for a physician to confirm if a patient needs a certain medication or treatment."

3
4 Request for Admission 54: This request for admission is irrelevant and is not reasonably
5 calculated to lead to the discovery of admissible evidence. The request is overbroad and
6 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
7 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
8 specific as to which "patient" is being referred to.

9 RFA 54: "Admit that a good faith in-person examination of a patient enhances the
10 opportunity for a physician to confirm the suspected medical conditions."

11
12 Request for Admission 55: This request for admission is irrelevant and is not reasonably
13 calculated to lead to the discovery of admissible evidence. The request is overbroad and
14 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
15 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
16 specific as to which "patient" is being referred to.

17 RFA 55: "Admit that a good faith in-person examination of a patient enhances the
18 opportunity for a physician to advise the patient of alternative treatment options and to determine
19 if the patient is aware of potential side effects."

20
21 Request for Admission 56: This request for admission is irrelevant and is not reasonably
22 calculated to lead to the discovery of admissible evidence. The request is overbroad and
23 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
24 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
25 specific as to which "patient" is being referred to.

26 RFA 56: "Admit that a good faith in-person examination of a patient enhances the
27 opportunity to rule out other medical conditions."

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Request for Admission 71: This request for admission is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. The request is overbroad and constitutes an incomplete and/or improper hypothetical question. Additionally, the request improperly seeks expert opinions and conclusions. The request is vague and ambiguous as to the phrase "look for". This request calls for speculation in that it seeks matters outside of Respondent's personal knowledge.

RFA 71: Admit that listeners of the radio show SKIN DEEP look for Dr. Jeannette Martello, M.D., in So. Pasadena, CA.

Request for Admission 72: This request for admission is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. The request is overbroad and calls for speculation in that it seeks matters outside of Respondent's personal knowledge.

RFA 72: "Admit that looking up the terms "Skin Deep" on the Yahoo.com Yellow Pages for the Pasadena, CA location, the search results list "Skin Deep Lazor [id] Med Spa," 425 South Fair Oaks Avenue, Pasadena, CA 91105.

CONCLUSION

Respondent therefore respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since Respondent believes that the discovery requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26]. See *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).

Furthermore, Petitioner's attorney has filed this Motion to Compel without good faith legal basis. Petitioner's attorney has filed this Motion to Compel for improper purposes such as to harass Respondent and cause unnecessary delay and needlessly increase the cost of litigation as he has done on two prior eleventh hour occasions.

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Respondent shall transmit said dispositive Motion for Summary Judgment. Respondent respectfully requests that the Trademark Trial and Appeal Board review said Motion for Summary Judgment since it has a valid basis of disposing of the case at hand and to do so would not be prejudicial to the Petitioner.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

I declare under penalty of perjury under the laws of the State of California and the laws of the United States of America that the above is true and correct.

Executed on March 5, 2009 in South Pasadena, California.

Jeannette Martello
M.D.

DATED: March 5, 2009

In the interests of justice and efficiency.

Respectfully,

By: /jeannette martello, m.d./
Jeannette Martello, M.D.
Respondent
In Pro Per

TESSER & RUTTENBERG

ATTORNEYS AT LAW

12100 WILSHIRE BOULEVARD, SUITE 220

LOS ANGELES, CALIFORNIA 90025

TELEPHONE (310) 207-4022

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March 3, 2008

Via Fax Only (866) 824.8680

David Hong, Esq.

Law Office of David Hong

P.O. Box 2111

Santa Clarita, California 91386-2111

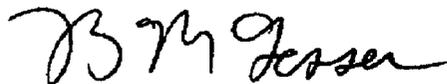
Re: ACM Enterprises, Inc. v. Jeannette Martello
Cancellation No. 92044697
Reg. No. 2932593

Dear David:

I just recently noticed that the Facilities and Management Services Agreement ("Agreement") produced by Petitioner in January 2006 is incomplete (see pages 117 and 118 of Petitioner's 1-24-06 production). You only produced the first and last pages of what appears to be a 14 page document. Please send me a complete copy of the Agreement at your earliest convenience.

However, be advised that if we do not receive a complete copy of the Agreement within the next seven days, we will be forced to compel its production via a motion before the TTAB. I trust this will not be necessary under the circumstances, and thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,



Brandon M. Tesser

BMT:ws

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Exhibits - Martello Decl. 3-5-09
Opp. to Motion to Compel
Page 1

TESSER & RUTTENBERG
12100 Wilshire Boulevard, Suite 220
Los Angeles, California 90025
TEL: (310) 207-4022
FAX: (310) 207-4033

FACSIMILE TRANSMITTAL COVER SHEET

Date: March 3, 2008

TO	David Hong, Esq.
FAX NUMBER	(866) 824-8680
RE	ACM Enterprises v. Jeanette Martello
FROM	Brandon M. Tesser
DOCUMENT SENT	Letter dated March 3, 2008

This Transmission, Including Cover Sheet, Consists of 2 Pages

COMMENTS:

THIS FACSIMILE IS CONFIDENTIAL AND PRIVILEGED AND INTENDED FOR THE ADDRESSEE ONLY. IF YOU ARE NOT THE ADDRESSEE, PLEASE NOTIFY THE SENDER AND DESTROY THIS FACSIMILE AND ALL COPIES. THANK YOU.

Cancellation No. 92044697
Exhibits - Martello Decl. 3-5-09
Opp. to Motion to Compel
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TESSER & RUTTENBERG
12100 Wilshire Boulevard, Suite 220
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TEL: (310) 207-4022
FAX: (310) 207-4033

FACSIMILE TRANSMITTAL COVER SHEET

Date: March 3, 2008

TO	David Hong, Esq.
FAX NUMBER	(866) 824-8680
RE	ACM Enterprises v. Jeanette Martello
FROM	Brandon M. Tesser
DOCUMENT SENT	Letter dated March 3, 2008

This Transmission, Including Cover Sheet, Consists of 2 Pages

COMMENTS:

Cancellation No. 92044697
Exhibits - Martello Decl. 3-5-09
Opp. to Motion to Compel
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Brandon Tesser

From: David Hong [david_hong@sbcglobal.net]
Sent: Monday, March 03, 2008 6:19 PM
To: Brandon Tesser
Subject: ACM v Martello

Re: Client: ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc.
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This e-mail confirms that you have granted my office until **Wed., March 12, 2008** to respond to your discovery fax letter dated March 3, 2008. I appreciate the extension since I have jury duty starting March 10, 2008.

Note that your letter states that a complete copy of the Facilities and Mgt Services Agreement from Petitioner's 1-24-2006 document production would need to be produced by seven days of the March 3, 2008 letter or March 10, 2008.

If this is not correct, please advise.

In response to my inquiry of the reason for further production of the entire document, you stated relevance to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding).

I will review your March 3, 2008 letter and the applicable discovery rules to respond. You stated that a redacted version of the Facilities and Management Services Agreement may be acceptable to keep confidential the financial terms between Dr. Berger and ACM.

I also noted that Dr. Martello still has not yet responded to our repeated requests for discovery, and since this case is in suspension for settlement talks, **it is puzzling that your client is pursuing avenues for continuing litigation.**

Nonetheless, I will respond to your March 3, 2008 letter by March 12, 2008.

I am glad to hear that your wife delivered safely.

Very truly yours,

David Hong

David Hong, Esq.,

3/4/2008

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LAW OFFICE OF DAVID HONG

Patent, Trademark, and Intellectual Property

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3/4/2008

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LAW OFFICE OF DAVID HONG

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Patent, Trademark, Copyright, Trade Secret &
Related Causes

March 12, 2008

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL PDF LETTER: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter follows my March 3, 2008 e-mail letter in response to your March 3, 2008 facsimile letter regarding your supplemental request for the production of the complete copy of the Feb. 1, 2004 Facilities and Management Services Agreement between Berger Medical Corporation and Skin Deep Laser Med Spa, Inc. ("Agreement").

ACM did not produce the entire Agreement in view of the confidential nature of its contents; however, to comply with good faith efforts to participate in discovery, the first and last pages of this Agreement were produced (see Pet. Doc. Prod. 1-24-2006, pages 117 and 118) to identify the existence of this Agreement and to not waive any confidentiality of its contents.

Your March 3, 2008 facsimile letter failed to give any reasons for a further production. I remind you of your duty to make a good faith effort, by conference or correspondence, to resolve with the other party or attorney the issues presented in a motion to compel a further production of documents. See 37 CFR § 2.120(e) and TBMP 523.02.

After receiving your March 3, 2008 facsimile letter, I called you to ask why you needed the full Agreement. In response, you stated that this document was relevant to the issue of standing (i.e. whether ACM Enterprises had the proper standing for this TTAB proceeding) and other reasons, but you did not provide any other reasons.

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Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
March 12, 2008
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Response to Respondent's March 3, 2008 Request for Supplemental Document Production:
In response, my client reasserts its objections to the Dec. 20, 2005 First Set of Request for Production of Documents propounded by the Respondent, which were properly presented in Petitioner's Jan. 24, 2006 response. Petitioner will not be providing a complete version of its Feb. 1, 2004 Agreement.

TBMP 402.02 Limitations on Right to Discovery

The right to discovery is not unlimited. Even if the discovery sought by a party is relevant, it will be limited, or not permitted, where, inter alia, it is unreasonably cumulative or duplicative; or is unduly burdensome or obtainable from some other source that is more convenient, less burdensome, or less expensive; or "where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information."

For example, in those cases where complete compliance with a particular request for discovery would be unduly burdensome, the Board may permit the responding party to comply by providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs. (emphasis added).

However, without waiving the above objections or waiving the right to confidentiality of this Agreement, I am providing a redacted page 4 and the following selection from the Feb. 2004 Agreement to show that ACM has proper standing in this Trademark Cancellation Proceeding:

From Page 4 of the Agreement:

3.9 License to Use Trademarks and Trademarks of Company. Doctor's use of any trademark, trade name, service mark, insignia, slogan, emblem, symbol, design or other identifying characteristic owned by or associated with Company, or any of its subsidiaries or affiliates (collectively, "Company Marks") shall be subject to the written approval of Company. Doctor acknowledges both before and after the expiration of this Agreement the exclusive right of Company to use or to grant others the right or license to use any Company Marks. Doctor acknowledges that use of such Company Marks by Doctor are granted at absolute discretion of the Company, and such use shall terminate immediately upon written notice from Company.

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Mr. Brandon Tesser, Esq.
TESSER & RITTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
Attorney File No. 2005-02-0107
March 12, 2008
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See the attached three pages of supplemental document production dated March 12, 2008. The e-mail copy of this letter has an attached PDF file. Note the **CONFIDENTIAL** designation as required by the TTAB Confidentiality Order, dated Nov. 28, 2006, Sec. 1: Classes of Protected Information.

To further clarify, please see Petitioner's Jan. 24, 2006 Response to Respondent's Special Interrogatory No. 4, which has been reproduced in part:

For the Pasadena, CA Location:

The medical practice is Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation, which is a California Corporation and was incorporated on Jan. 7, 2004 with a registered office of 425 S. Fair Oaks Avenue, Suite B, Pasadena, CA 91105.

Dr. Saul Berger, M.D. is the 100% shareholder of Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation; Dr. Saul Berger, MD serves as Director and Chief Executive Officer, and Mr. Colin Hurren serves as Director, Secretary, and Chief Financial Officer.

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is a California Corporation, incorporated in Nov. 19, 1991 as "Once in a Lifetime Entertainment, Inc." and was subsequently renamed "ACM Enterprises, Inc."

ACM Enterprises, Inc. DBA Skin Deep Laser Med Spa, Inc. is the facilities and management service company to Berger Medical Corporation DBA Skin Deep Laser Med Spa, a Medical Corporation.

This information properly answers your inquiry regarding relevance and standing of ACM in this proceeding against Dr. Martello and fulfills my client's duty of making a good faith effort

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Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
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Attorney File No. 2005-02-0107
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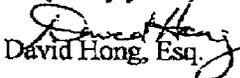
in responding to a discovery request. If you have other discovery issues, please do not hesitate to contact me.

Regarding Settlement:

We are currently in suspension for settlement purposes. In our March 3, 2008 telephone conference, you stated you wanted the complete Facilities and Services Agreement to determine all issues for your client; however, you did not identify any other issues other than standing. With the standing issue settled, I again suggest that we schedule mediation for this case.

In my last patent and trademark case, I had a good experience with retired Fed. Judge John L. Wagner of Judicate West to mediate, and Judge Wagner was very effective in getting both sides to come to a reasonable business resolution of disputes. If Dr. Martello has a bone fide intention to use this suspension period to settle, I suggest that we coordinate calendars to select an appropriate date with Judge Wagner or another skilled mediator.

Very truly yours,


David Hong, Esq.

Encl: 3 page Supplemental Doc. Prod, dated March 12, 2008.

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(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

- (1) Selecting and removing medical staff officers.
- (2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.
- (3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

2283. The regular practice of medicine in a licensed general or specialized hospital having less than five physicians and surgeons on the medical staff, which does not have rules established by the board of directors thereof to govern the operation of the hospital, which rules include, among other provisions, all of the following, constitutes unprofessional conduct:

(a) Provision that membership on the medical staff shall be restricted to physicians and surgeons and other licensed practitioners competent in their respective fields and worthy in professional ethics. In this respect the division of profits for professional fees in any manner shall be prohibited and any such division shall be cause for exclusion from the staff.

(b) Provision that adequate and accurate medical records be prepared and maintained for all patients.

2284. (a) A licensed physician and surgeon or a licensed podiatrist, or a group of physicians and surgeons or podiatrists, or a medical or podiatry corporation shall not share in any fee charged by an acupuncturist or receive any consideration from or on behalf of such acupuncturist for any referral or diagnosis.

(b) A licensed physician and surgeon or podiatrist shall not employ more than one acupuncturist.

(c) A group of physicians and surgeons or podiatrists, or a medical or podiatry corporation, shall not employ more than one acupuncturist for every 20 practitioners in such group or corporation.

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

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- (a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.
- (b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.
- (c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.
- (d) Any medical school approved by the division or a faculty practice plan connected with the medical school.

2286. It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws.

2287. The purchase, sale, or barter, or offering to purchase, sell, or barter any medical or podiatric degree, or any degree, diploma, certificate, affidavit, transcript, or other evidence made or purporting to be made, pursuant to any laws regulating the licensure of persons under this chapter, or any preceding medical practice act or for use in connection with the granting of any certificates or diplomas or the purchase, procurement, or altering in any material regard, with fraudulent intent, a diploma, certificate, affidavit, transcript, or other evidence required for issuing any certificate or diploma that has been purchased, fraudulently issued, counterfeited, or materially altered constitutes unprofessional conduct. The attempt to or conspiring to violate this section also constitutes unprofessional conduct.

2288. The impersonation of any applicant or acting as proxy for any applicant in any examination required under this chapter for a certificate constitutes unprofessional conduct.

2289. The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct.

2290. The provisions of Article 4 (commencing with Section 580) of Chapter 1, relating to frauds of medical records, degrees, diplomas, certificates, and transcripts are not affected by the provisions of this article and, so far as any act is a crime within their scope, such provisions control over the provisions of this article.

2290.5. (a) (1) For the purposes of this section, "telemedicine"

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constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter.

2411. Notwithstanding any other provision of law, the offering and operation by a medical corporation of a health care service plan licensed pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code is hereby authorized. For such purpose a medical corporation may employ, or enter into contracts or other arrangements with, any person or persons authorized to practice any of the healing arts, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional services other than as authorized by law.

2412. The Division of Licensing may adopt and enforce regulations to carry out the purposes and objectives of this article and the Moscone-Knox Professional Corporation Act including regulations requiring (a) that the bylaws of a medical or podiatry corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such regulations may provide, and (b) that a medical or podiatry corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

2413. This article shall apply to medical corporations which have physicians and surgeons licensed by the Osteopathic Medical Board of California as shareholders, officers, and directors only to the extent that this article is not in conflict with or inconsistent with Section 2454.

2415. (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

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

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to

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practice is not deceptive, misleading, or confusing.

(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

(d) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with that medical school.

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

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

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

(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine and shall adopt and administer regulations specifying appropriate podiatric medical name designations.

2416. Physicians and surgeons and doctors of podiatric medicine may conduct their professional practices in a partnership or group of physician and surgeons or a partnership or group of doctors of podiatric medicine, respectively. Physician and surgeons and doctors of podiatric medicine may establish a professional partnership that includes both physician and surgeons and doctors of podiatric medicine, if both of the following conditions are satisfied:

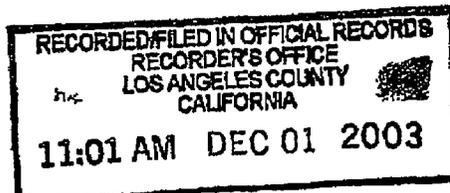
(a) A majority of the partners and partnership interests in the professional partnership are physician and surgeons or osteopathic physician and surgeons.

(b) Notwithstanding Chapter 2 (commencing with Section 15001) of Title 1 of the Corporations Code, a partner who is not a physician and surgeon shall not practice in the partnership or vote on partnership matters related to the practice of medicine that are outside his or her scope of practice. All partners may vote on general administrative, management, and business matters.

2417. (a) If the Department of Insurance has evidence that a business is being operated in violation of this chapter, Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code, or Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code, and that the business may be in violation of Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code, then the department shall report the business, and any

This page is part of your document - DO NOT DISCARD

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TITLE(S) : Fictitious Name Statement



FEE

D.T.T

\$10.00

CODE

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CODE

19

CODE

9

Assessor's Identification Number (AIN)
To be completed by Examiner OR Title Company in black ink.

Number of Parcels Shown

THIS FORM NOT TO BE DUPLICATED

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A

REGISTRAR - RECORDER / COUNTY CLERK'S FILING STAMP

✓

Name: R. Rosser Cole
Address: 200 N. Maryland Ave.,
Suite 302
City: Glendale, CA 91206

03 3613024

1 First Filing Renewal Filing

FICTITIOUS BUSINESS NAME STATEMENT

THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS: (Attach additional pages if required)

2	Fictitious Business Name(s)		3.
	1. Skin Deep Laser Med Spas, Inc. 2.		Articles of Incorporation or Organization Number (if applicable) AI #/ON 1804232
3	Street Address & City of Principal Place of Business in California (P.O. Box alone not acceptable)		Zip Code
	1981 New York Dr., Altadena, CA		91001
4	Full name of Registrant (if corporation - incorporated in what state)		
	ACM Enterprises Inc. - A California Corporation		
	Residence Street Address	City	State Zip Code
	1981 New York Dr., Altadena, CA	91001	
4A	Full name of Registrant (if corporation - incorporated in what state)		
	Residence Street Address	City	State Zip Code
4B	Full name of Registrant (if corporation - incorporated in what state)		
	Residence Street Address	City	State Zip Code
5	This Business is conducted by: (check one only)		
	<input type="checkbox"/> an individual <input type="checkbox"/> a general partnership <input type="checkbox"/> joint venture <input type="checkbox"/> a business trust <input type="checkbox"/> co-partners <input type="checkbox"/> husband and wife <input checked="" type="checkbox"/> a corporation <input type="checkbox"/> a limited partnership <input type="checkbox"/> an unincorporated association other than a partnership <input type="checkbox"/> a limited liability company		

6 The registrant commenced to transact business under the fictitious business name or names listed on (Date): _____
 Registrant has not yet begun to transact business under the fictitious business name or names listed herein.

7 I declare that all information in this statement is true and correct.
(A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

8	Signature of Registrant(s)		8A ACM Enterprises Inc. Corporation or Company Name <i>Colin Hurren</i> Signature President Title Colin Hurren Type or Print Name
	Signature	type/print name	
	Signature	type/print name	
	Signature	type/print name	

This statement was filed with the County Clerk of LOS ANGELES County on date indicated by file stamp above.

NOTICE - THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE YEARS FROM DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO THAT DATE. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (See Section 14411 et seq., Business and Professions Code)

REGISTRAR - RECORDER/COUNTY CLERK
BUSINESS FILING AND REGISTRATION
P.O. BOX 33592, LOS ANGELES, CA 90053-0592
PH: (562) 462-2177

FILING FEE: \$10.00 for 1 FBN and 2 registrants
plus \$2.00 for each additional FBN/registrant.

THIS FORM SHOULD BE TYPED
OR PRINTED "LEGIBLY" IN BLACK INK.
FORM # 707-2000-7020 (REV. 1/02)

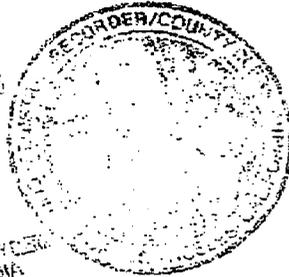
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This is a true and verified copy of the record
if it bears the seal, impressed in purple ink,
of the Registrar, Superior Court, Clerk

DEC 1 2008

Carol A. ...
LOS ANGELES COUNTY, CALIFORNIA



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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1621 W. Cameron Ave., Suite 300, West Covina, CA 91790-2738
P. O. Box 1500, West Covina, CA 91783-1500
Telephone (626) 480-7200 Fax (626) 480-7280
www.boe.ca.gov

GETTY T. YEE
First District, San Francisco
BILL LEONARD
Second District, Oroville/Sacramento
MICHELLE STEEL
Third District, Rolling Hills Estates
JUDY CHIL, Ph.D.
Fourth District, Los Angeles
JOHN CHIANG
State Controller
RAMON J. HIRSHG
Executive Director

December 10, 2008

Jeannette Martello, M.D., J.D.
701 Fremont Avenue
South Pasadena, CA 91030

Re: Verification of Seller's Permit Information

Ms. Jeannette Martello, M.D., J.D.:

This office received your fax dated 12/3/2008 where you are requesting information on if a particular business has a Seller's Permit. To answer your request, I am providing the following public information:

1. Search of our database this date does not show an active Seller's Permit for a business located at 425 S. Fair Oaks Ave. Pasadena, CA 91105.
2. Search of our database this date does not show an active Seller's Permit for a business located at 16030 Ventura Blvd. Suite 150, Encino, CA 91436.
3. Search of our database this date does not show an active Seller's Permit for a business located at 1808 Verdugo Blvd. Suite 118, Glendale, CA 91208.
4. Search of our database this date does not show an active Seller's Permit for Skin Deep Laser Med Spa, Skin Deep Laser med Spa, Inc., ACM Enterprises, Inc or Berger Medical Corporation.

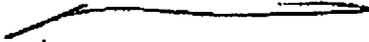
California Civil Code 1798.69 prohibits the Board from releasing the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization except to the extent necessary to verify resale certificate or to administer the tax and fee provisions of the Revenue and Taxation Code. If you have a seller's permit number for an individual business owner and you would like to verify its validity, you may verify it on the Board's web-site at www.boe.ca.gov by entering the seller's permit number or you may call our information center at 800-735-2929.

In your letter you are also asking if a seller's permit can be used for another location, if a separate seller's permit is needed for each location, or if a seller's permit can be assigned or transferred. Please see attached Sales and Use Tax Regulation 1699. Permits. 1699 (a) states in general, every person engaged in the business of selling tangible personal property is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. A Seller's Permit is issued to a specific person making sales at specific location. It can not be assigned or transferred. If a business has more than one location, and the nature of each business is the same, a "master" permit will be issued and a "sub" location permit will be issued for each sub location.

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If I can be of further assistance, please contact me at (626) 480-7230.

Sincerely,


Charles Cao
Business Taxes Compliance Specialist
West Covina Office

Enclosed: Publication 1699

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- (9) Licensed marriage, family, and child counselors.
- (10) Licensed clinical social workers.
- (11) Licensed optometrists.
- (n) Dental corporation.
- (1) Licensed physicians and surgeons.
- (2) Dental assistants.
- (3) Registered dental assistants.
- (4) Registered dental assistants in extended functions.
- (5) Registered dental hygienists.
- (6) Registered dental hygienists in extended functions.
- (7) Registered dental hygienists in alternative practice.

13402. (a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

13403. The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

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13404. A corporation may be formed under the General Corporation

same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business in this state."

13405. (a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be

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admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

13407. Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to

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practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

13408. The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged.

In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

13408.5. No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Health Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

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CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 2050-2079

2050. The Division of Licensing shall issue one form of certificate to all physicians and surgeons licensed by the board which shall be designated as a "physician's and surgeon's certificate."

2051. The physician's and surgeon's certificate authorizes the 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.

2052. (a) Notwithstanding Section 146, any 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 so 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, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

2052.5. (a) The proposed registration program developed pursuant to subdivision (b) shall provide that, for purposes of the proposed registration program:

(1) A physician and surgeon practices medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium, practices or attempts to practice, or advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person in this state.

(2) A doctor of podiatric medicine practices podiatric medicine in this state across state lines when that person is located outside of this state but, through the use of any medium, including an electronic medium, practices or attempts to practice podiatric medicine, as defined in Section 2472, in this state.

(3) The proposed registration program shall not apply to any consultation described in Section 2060.

(b) The board may, at its discretion, develop a proposed registration program to permit a physician and surgeon, or a doctor

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legislation.

2053.5. (a) Notwithstanding any other provision of law, a person who complies with the requirements of Section 2053.6 shall not be in violation of Section 2051 or 2052 unless that person does any of the following:

- (1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body.
 - (2) Administers or prescribes X-ray radiation to another person.
 - (3) Prescribes or administers legend drugs or controlled substances to another person.
 - (4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner.
 - (5) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.
 - (6) Sets fractures.
 - (7) Treats lacerations or abrasions through electrotherapy.
 - (8) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, a surgeon, or a physician and surgeon.
- (b) A person who advertises any services that are not unlawful under Section 2051 or 2052 pursuant to subdivision (a) shall disclose in the advertisement that he or she is not licensed by the state as a healing arts practitioner.

2053.6. (a) A person who provides services pursuant to Section 2053.5 that are not unlawful under Section 2051 or 2052 shall, prior to providing those services, do the following:

- (1) Disclose to the client in a written statement using plain language the following information:
 - (A) That he or she is not a licensed physician.
 - (B) That the treatment is alternative or complementary to healing arts services licensed by the state.
 - (C) That the services to be provided are not licensed by the state.
 - (D) The nature of the services to be provided.
 - (E) The theory of treatment upon which the services are based.
 - (F) His or her educational, training, experience, and other qualifications regarding the services to be provided.
 - (2) Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in paragraph (1). The client shall be provided with a copy of the written acknowledgement, which shall be maintained by the person providing the service for three years.
- (b) The information required by subdivision (a) shall be provided in a language that the client understands.
- (c) Nothing in this section or in Section 2053.5 shall be construed to do the following:
- (1) Affect the scope of practice of licensed physicians and surgeons.
 - (2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

2054. (a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any

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other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases "doctor of podiatric medicine," "doctor of podiatry," and "podiatric doctor," or the initials "D.P.M.," and shall not be in violation of subdivision (a).

2055. Notwithstanding any other provision of law, a person issued a physician's and surgeon's certificate by the Medical Board of California pursuant to the provisions of this chapter shall be entitled to use of the initials "M.D."

2056. (a) The purpose of this section is to provide protection against retaliation for physicians who advocate for medically appropriate health care for their patients pursuant to Wickline v. State of California 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a physician and surgeon be encouraged to advocate for medically appropriate health care for his or her patients. For purposes of this section, "to advocate for medically appropriate health care" means to appeal a payor's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the physician, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care, reasonably believes impairs the physician's ability to provide medically appropriate health care to his or her patients.

(c) The application and rendering by any person of a decision to terminate an employment or other contractual relationship with, or otherwise penalize, a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care violates the public policy of this state. No person shall terminate, retaliate against, or otherwise penalize a physician and surgeon for that advocacy, nor shall any person prohibit, restrict, or in any way discourage a physician and surgeon from communicating to a patient information in furtherance of medically appropriate health care.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a physician has complied with those protocols.

(e) Medically appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing

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(g) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

2402. The provisions of Section 2400 do not apply to a medical or podiatry corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.

2406. A medical corporation or podiatry corporation is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physician assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.

2407. A medical or podiatry corporation shall be subject to the provisions of Sections 2285 and 2415.

2408. Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a medical or podiatry corporation, except an assistant secretary or an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

Notwithstanding the provisions of this section or Sections 13401.5, 13403, 13406, and 13407 of the Corporations Code, a shareholder of a medical corporation which renders professional services may be a medical corporation which has only one shareholder who shall be a licensed person as defined in Section 13401 of the Corporations Code. The shareholder of the latter corporation may be an officer or director of the former corporation.

Nothing in this section shall be construed as prohibiting a nonlicensed person from using the business titles of executive vice president, chief executive officer, executive secretary, or any other title denoting an administrative function within the professional corporation.

2409. The income of a medical and podiatry corporation attributable to professional services rendered while a shareholder is a

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disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in such a professional corporation.

2410. A medical or podiatry corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter.

2411. Notwithstanding any other provision of law, the offering and operation by a medical corporation of a health care service plan licensed pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code is hereby authorized. For such purpose a medical corporation may employ, or enter into contracts or other arrangements with, any person or persons authorized to practice any of the healing arts, but no such employment, contract, or arrangement shall provide for the rendering, supervision, or control of professional services other than as authorized by law.

2412. The Division of Licensing may adopt and enforce regulations to carry out the purposes and objectives of this article and the Moscone-Knox Professional Corporation Act including regulations requiring (a) that the bylaws of a medical or podiatry corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such regulations may provide, and (b) that a medical or podiatry corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

2413. This article shall apply to medical corporations which have physicians and surgeons licensed by the Osteopathic Medical Board of California as shareholders, officers, and directors only to the extent that this article is not in conflict with or inconsistent with Section 2454.

2415. (a) Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

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**The Bottom Line:
The Business of Medicine – Medical Spas**

There has been an explosion of cosmetic medicine over the past few years, and many physicians are being approached to "increase their bottom line" by entering into this lucrative field. Recently, our office received a letter from a business promoting the many programs they offered to physicians that contained the following message:

"... Lastly, we are very excited to announce our Medical Director program. This opportunity allows Doctors and Physicians to earn up to \$400 per month per spa in their area. We have several DaySpas that anxiously await a Medical Director and we would anticipate a large number of client referrals to your practice.'.....'We would be happy to discuss how they can benefit your practice and grow your bottom line.'"

This business is offering the opportunity for physicians, for a fee, to rent their license to a business so that the business may engage in the practice of medicine — a profession for which it has no license or qualifications.

Is what this business proposes legal? Can physicians simply sign-on, lend their names on paper to a salon or spa, collect "up to" \$400 a month, and escape any liability or responsibility for the patients treated by the business? NO!

In 2006, Senator Liz Figueroa authored legislation (SB 1423, Chap 873) that directed the medical and nursing boards to work together to study the issue of safety in the use of lasers in cosmetic procedures. Over the past year, the boards have been holding public forums on the subject. What we have learned is that the current law is being violated with impunity by many in the cosmetic medical field.

The current environment gives rise to violations of the laws governing the business of medical practices, including violations of the corporate practice prohibitions, as well as fee-splitting and payment for referrals. The illegal business models give rise to the use of unlicensed or inappropriately licensed personnel, paper-only supervision ("rent-a-license") of allied health professionals, consumer confusion over the medical nature of the procedures, and confusion over who is responsible for the patient. Patients are not fully informed of the risks and often do not know the medical nature of the treatments or who is responsible for their care.

The use of prescriptive medical devices and injections for cosmetic reasons is the practice of medicine:

There is a tendency for the public, and some in the profession, to view laser treatments, Botox and cosmetic filler injections as cosmetic rather than medical treatments. The use of prescriptive drugs and devices, however, is the practice of medicine, and the same laws and regulations apply to these types of treatments as those driven by medical necessity. There are no separate laws governing these procedures, and physicians will be held to the same standard as they are for their routine medical practices. This means that the standards for informed consent, delegation to allied health professionals, physician-patient confidentiality and boundaries, maintaining medical records, as well as responsibility and liability apply to physicians, even those denominated "medical director."

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Physician responsibility when delegating procedures to allied health professionals:

In the practice of medicine, physicians routinely delegate functions to allied health professionals. Physicians, however, may only delegate to appropriately licensed staff that they know to be capable of performing the task. Lasers and other prescriptive devices and prescriptive drugs must only be utilized by licensed registered nurses, nurse practitioners, or physician assistants. No unlicensed staff, including medical assistants, may use these devices or drugs, regardless of the level of training or supervision. Likewise, delegation to improperly licensed personnel, such as estheticians, is prohibited.

Supervision of those to whom procedures are being delegated:

While current law allows the delegation of laser treatments and injections to the above mentioned licensees, the law requires supervision by the physician. In the current environment, many have operated under the opinion that since the nursing regulations are broadly written, nurses may perform anything anywhere with essentially no supervision as long as there are "standardized procedures" or "delegation of services" documents on file.

Nurses:

Standardized procedures for nurses allow nurses to perform procedures while the physician is not on-site; however, they do not absolve physicians of their supervision responsibilities. Nor does the law allow nurses to set up a practice in a salon, hire a physician supervisor, or perform medical procedures independently.

The law does not contain a legal definition of supervision, and therefore, absent a legal definition, the plain English definition applies. "Supervision" is defined as the act of supervising, which is to oversee, to direct, to have charge, to inspect, to provide guidance and evaluation. The law and regulations support this definition.

As an example, the regulations for "standardized procedures guidelines" require physicians to be responsible for ensuring the experience, training, and education requirements for performance of the delegated function – and this must be documented. The regulations require that a method of initial and continuing evaluation of the nurses' competence be established. Further, it is the responsibility of the physician to examine the patient before delegating a task to a registered nurse.

When functioning under "standardized procedures," physicians need not be present in the facility when the procedures are being performed. The facility, however, must be a medical setting. Regulations require that the location be an "organized healthcare system," which is not a salon, spa, or other facility not under the control of the physician.

An appropriate prior examination is required where prescriptive drugs and devices will be used, and this examination may not be delegated to registered nurses. After performing the examination, the supervising physician may delegate a procedure that utilizes a prescriptive device to a nurse working under standardized procedures.

The guidelines further require the standardized procedures to describe the circumstances under "which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition." While there is no actual mileage limit relating to supervision, this requirement certainly means that the physician must be immediately reachable and able to provide guidance in the event of an emergency or the need for a higher level of care that must be provided by the physician. Physicians must be within a geographical distance that enables them to effectively provide supervision and support when needed or upon request.

For more specific information on registered nurse and nurse practitioner regulations, the Board of Registered Nursing website is: www.mn.ca.gov.

Nurse Practitioners:

Nurse practitioners are granted much more autonomy than registered nurses. They are advanced practice nurses who are master's-level educated, and, for that reason, may perform certain functions with a different level of supervision than registered nurses. The major exception to the rules governing their supervision in cosmetic procedures is that they may be delegated the task of providing the appropriate prior examination and ordering the drug or prescriptive device for the patient, if acting under standardized procedures.

Physician Assistants:

The supervision of physician assistants (PAs) is similar to that of nurses; however, the regulations governing PAs are much more specific. First, PAs may only be delegated tasks that are part of the physician's customary practice. In other words, obstetricians may supervise PAs treating obstetrical patients; pediatricians may supervise PAs providing care to pediatric patients, and so forth. Therefore, if cosmetic medicine is not a part of the physician's customary practice, the physician may not supervise a PA providing cosmetic procedures. In addition, physicians may only supervise four PAs at any given time, and must be in the facility with the PA or be immediately available by electronic communication if the PA is working under a delegation of services agreement.

PAs may be delegated the "appropriate prior examination" of the patient, but there are methods enumerated in the law and regulations on how physicians must provide their supervision and evaluation. For more specific information, all of the rules and regulations are available at the Physician Assistant Committee website: www.pac.ca.gov.

Supervision of all allied health professionals:

"Supervise" is a verb, and it requires those calling themselves supervisors to guide, direct, oversee, and evaluate performance. Physicians must really supervise, not simply lend their license to allied health professionals on paper without providing any supervision. A "supervising" physician who does not give direction, oversee or inspect, is not performing the task of supervising and is in violation of the law.

Qualifications of Physician Supervisors:

Physicians may only delegate to those that they know to be capable of performing the task. If they are to supervise the procedure, the physician too should be capable of performing it. One cannot provide guidance, direction, evaluation and oversight unless one is knowledgeable and competent in the procedure being delegated.

The law does not require board certification to perform cosmetic procedures. That said, however, one should not think that the absence of this requirement allows anyone of any specialty to supervise cosmetic procedures, unless the physician has sufficient knowledge and training in the procedures being performed.

Business arrangements; issues of ownership and control:

California law prohibits the corporate practice of medicine. Laypersons or lay entities may not own any part of a medical practice. (Business & Professions Code Section 2400) Physicians must either own the practice, or must be employed or contracted by a physician-owned practice or a medical corporation. (The majority of stock in a medical corporation must be owned by California licensed physicians, with no more than 49% owned by other licensed health care professionals, such as nurses, physician assistants, nurse practitioners, etc. No stock in a medical corporation may be owned by a lay-person. (Corporation Code Section 13401.5(a))

In an attempt to circumvent this legal prohibition, some creative business and management schemes have emerged that violate the law. Businesses that provide management services, franchises or other models that result in any unlicensed person or entity influencing or making medical decisions are in violation of the law.

As an example, businesses that control medical records, the hiring and firing of healthcare staff, decisions over coding and billing, and the approving or selection of medical equipment or drugs, violate the law. Management Service Organizations (MSOs) arranging for advertising, or providing medical services rather than only providing administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business) are also engaging in illegal conduct. Also, many current business arrangements violate the prohibition against fee-splitting or giving any consideration for patient referrals. The current practice of lay-owned businesses hiring medical directors is also prohibited. A physician who acts as medical director of a lay-owned business is aiding and abetting the unlicensed practice of medicine. (See Precedential Decision No. MBC - 2007-01-Q, in the matter of the Accusation against Joseph F. Basile.)

Physicians who become employees or contractors of lay-owned spas and violate other business provisions of the laws may be disciplined for unprofessional conduct.

Physician Responsibility for back-up systems and emergency plans:

Physicians who perform or delegate treatments are responsible for their patients' care. As supervisors, they are responsible to ensure that back-up systems and emergency plans are in place.

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Under current law, the patients are the physician's responsibility, and the physician is responsible for treating mishaps, complications or any other emergency that might arise from the treatments the physician has delegated. While nurses are responsible for their patients within their scope-of-practice, under the Medical Practice Act, physicians have the ultimate responsibility for the care of their patients.

Physician responsibility for patient informed consent and education:

All medical procedures must be preceded by informed consent, which should include the possible risks associated with the treatment. While there is no specific code section that enumerates the contents of an informed consent, the well-established doctrine of informed consent in case law requires that patients must be, at a minimum, informed of:

- 1) the nature of the treatment,
- 2) the risks, complications, and expected benefits, including its likelihood of success, and
- 3) Any alternative to the recommended treatment, including the alternative of no treatment, and its risks and benefits.

Providing sufficient information to constitute informed consent is the responsibility of the physician.

Physician responsibility for advertising and marketing:

California law requires advertising to include the physician's name or the name for which they have a fictitious name permit. (Business & Professions Code Section 2272) While nurses may be performing the treatment, the name of the supervising physician, or his or her registered fictitious name, must be in the advertisement.

The law governing physician advertising is specific, and requires the physician ads not be misleading. California law is very specific in prohibiting many of the advertising practices currently being used to promote cosmetic treatments. The use of models, without stating that they are models, the use of touched-up or refined photos, and claiming superiority of the facility or procedures with no objective scientific evidence is prohibited. Also, the use of discount or "bait and switch" promotions is prohibited. The use of "for as low as" in advertising procedures, is strictly prohibited. The laws relating to physician advertising, Business & Professions Code Section 651, may be viewed on the Medical Board's website: www.mbc.ca.gov.

The Bottom Line:

Cosmetic procedures are the practice of medicine, and physicians are responsible for their patients, regardless of who performs the treatments. There is no legal scheme that allows physicians to collect a fee for signing their name to an agreement to lend their license to an entity to practice medicine. Legally, the "clients" of the spa or salon are patients -- the *physician's* patients, and that arrangement comes with all of the responsibility *and liability* that goes with any other doctor-patient relationship. Becoming involved in an improper business arrangement, may, in the short term, raise a physician's economic bottom line. In the long run, however, the risks are great. In reality, the

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bottom line is that physicians who become embroiled in these illegal arrangements may lose their license, or their livelihoods.

It is impossible to cover all of the relevant legal issues in this short article, and the content is not a substitute for professional legal advice. Physicians may want to consult with their attorneys or malpractice carriers for additional legal advice.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.,

Respondent.

Cancellation No.:92044697

Filed: March 5, 2009

Certificate of Facsimile Transmission

I hereby certify that this correspondence (Pages 1-10, excluding cover page) of the Opposition of the Motion to Compel, Motion for a Protective Order and Motion to Stay as well as Exhibit (pages 1 through 57) is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below.

On March 5, 2009.

Sincerely,

Jeannette Martello,
M.D.

Jeannette Martello, M.D.
Respondent In Pro Per

1 JEANNETTE MARTELLO, M.D.
2 701 Fremont Avenue
3 South Pasadena, CA 91030
4 Telephone: (626) 403-1747
5 Facsimile: (626) 403-1784

6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
7 THE TRADEMARK TRIAL AND APPEAL BOARD

8 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
9)
10 Petitioner,) Filed March 5, 2009
11)
12 vs.)
13 JEANNETTE MARTELLO, M.D.,)
14 Respondent)

15 DECLARATION OF JEANNETTE MARTELLO IN SUPPORT OF
16 RESPONDENT'S OPPOSITION TO MOTION TO COMPEL
17 MOTION FOR PROTECTIVE ORDER
18 MOTION FOR STAY OF DISCOVERY
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Cancellation No. 92044697
Declaration of Martello
Opp. to Motion to Compel
Motion for a Protective Order
Motion to Stay Discovery
COVER PAGE

1 Déjà vu. Petitioner's attorney has used the exact same bad faith, dilatory
2 tactics at the last minute on three separate occasions. Delay tactic number 1: On
3 December 22, 2005, an extension of time was granted. Plaintiff's trial testimony period was to
4 start on April 22, 2006. A Motion to Compel Discovery was filed by Petitioner on
5 April 21, 2006 after a single last-minute phone call was made to Respondent's attorney on
6 April 20, 2006. Delay tactic number 2: Over a year later, an extension of time was requested
7 on June 30, 2007. Plaintiff's trial testimony period was set to start on August 4, 2007. Plaintiff
8 filed a Motion for Summary Judgment on Friday, August 3, 2007 with exhibits that were
9 mailed separately on Saturday August 4, 2007 replete with a Certificate of Mailing signed by
10 attorney David Hong in accordance with 37 CFR § 2.197(a)(1)(A)(ii) that "the person signing
11 the certificate should have reasonable basis to expect that the correspondence would be mailed
12 or transmitted on or before the date indicated." This is incredible considering the fact that
13 page 12 of Hong's 216 pages of exhibits was printed off from the TARR web server at
14 19:03:12 ET 4:03 p.m. PST) on Friday, August 3, 2007 whilst the mailing post office closed
15 at 4:30 p.m. on August 3, 2007. The exhibits for the Motion for Summary Judgment were
16 received in Virginia on Monday, August 6, 2007 at 11:28 a.m. Delay tactic number 3: On
17 September 17, 2008, a three month extension of time was granted. The Plaintiff's trial
18 testimony period was set to start on February 15, 2009. On February 14, 2009, Petitioner filed
19 this Motion to Compel.

20 This Second Motion to Compel presents yet another refrain in Petitioner's ongoing effort to
21 engage Respondent in frivolous motion practice over irrelevant time-consuming discovery
22 disputes. Petitioner has attempted to divert resources and attention away from the fact that
23 Petitioner ACM has absolutely no standing. This Motion for a Protective Order and for a Motion
24 to Stay Discovery to review a dispositive Motion for Summary Judgment is germane to the
25 present Motion to Compel. Respondent has recently discovered that Petitioner had no standing
26 to bring this Petition for Cancellation to the Trademark Trial and Appeal Board in the first place
27 and Petitioner still has no standing to this day. This newly discovered evidence will render the
28

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1 Motion to Compel as well as all other proceedings moot once the Trademark Trial and Appeal
2 Board has had a chance to review the evidence submitted with the dispositive Motion for
3 Summary Judgment.

4 Petitioner's Motion to Compel should be denied because further discovery would be
5 unduly burdensome and oppressive. Furthermore, Respondent believes that the discovery
6 requested is unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26].

7 See *Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001). Respondent
8 respectfully requests a Motion for a Protective Order and for a Motion to Stay Discovery since
9 Respondent has discovered through newly revealed evidence that Petitioner lacked standing to
10 file the initial Petition for Cancellation in 2005. Petitioner lacks standing to this day. Therefore,
11 all Discovery that Petitioner seeks is the fruit of the same ill-begotten tree of deceit and fraud in
12 its initial filing of the Petition for Cancellation with the Trademark Trial and Appeal Board.

13 The Trademark Trial and Appeal Board has been more than patient in granting numerous
14 extensions of time. In order to prevent further waste of the Trademark Trial and Appeal Board's
15 time, Respondent respectfully requests a Motion for a Protective Order as well as a Motion to
16 Stay Discovery so that the Trademark Trial and Appeal Board may have a chance to review and
17 decide upon a dispositive Motion for Summary Judgment. The fact that the discovery period
18 would have ended within mere hours if Petitioner had not filed this Motion to Compel argues
19 that this stay would not be prejudicial to the Petitioner. This Motion for Summary Judgment is
20 germane to the present Motion to Compel since Respondent has recently discovered that
21 Petitioner had no standing to bring this Petition for Cancellation to the Trademark Trial and
22 Appeal Board in the first place. This newly discovered evidence will render the Motion to
23 Compel as well as all other proceedings moot once the Trademark Trial and Appeal Board has
24 had a chance to review the evidence submitted with the Motion for Summary Judgment.

25 Petitioner has forced Respondent to go on a wild goose chase to ferret out a sham Berger
26 Medical Corporation by failing to produce complete documentation regarding the business
27 relationship between Petitioner and Dr. Saul Berger. This illegal business relationship was
28

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1 documented in a Facilities and Management Services Agreement that was 14 pages in length.
 2 Pages 1 and 14 were provided to Respondent with a redacted page 4 that was produced after
 3 much prodding. (Exhibit, pages 1 through 9). This bogus Berger Medical Corporation was
 4 formed to break California law, specifically the Moscone Knox Act that governs professional
 5 corporations. Respondent has had to independently hire agencies to obtain California Secretary
 6 of State documents on a rush basis so as to unveil the extent to which Petitioner has broken laws
 7 as well as to unveil the fact that Petitioner had absolutely no standing to have brought forth this
 8 Petition for Cancellation in the first place. Respondent has expended in excess of \$ 30,000 on
 9 attorney's fees in this case in order to defend Respondent's Registration. It would be prejudicial
 10 to Respondent if this Motion for Summary Judgment were not reviewed. Furthermore, it is in
 11 the interest of justice and in the interest of the economics of time that the Trademark Trial and
 12 Appeal Board stay discovery and review this dispositive Motion for Summary Judgment.

13 MOTIVE FOR BAD FAITH AND DILATORY TACTICS

14 The motives and reasons for Petitioner's conduct via these bad faith dilatory actions
 15 became apparent only after Respondent completed arduous discovery which revealed that
 16 Petitioner has never had standing to file a Petition for Cancellation. Petitioner's counsel had
 17 been uncooperative in producing information that would have allowed this discovery to have
 18 occurred at an earlier point in the proceeding. (Exhibit, pages 1 through 9). Petitioner ACM is
 19 not a professional corporation. Petitioner ACM is not a licensed practitioner. Therefore,
 20 according to California Business and Professions Code Sections 2285 and 2415, Petitioner has
 21 been illegally using the name Skin Deep Laser Med Spa in violation of these codes. (Exhibit,
 22 pages 10 through 13). It follows that Petitioner had no standing and continues to not have
 23 standing to this day. According to the Medical Board of California, a lay person can not be a
 24 partial owner of a fictitious name permit (question 17). Fictitious name permits can only be
 25 issued to professional medical corporations (question 18) and physicians may only be partners
 26 with other physicians (question 20). Additionally, fictitious name permits are not transferrable
 27 (question 14). (Exhibit, pages 34 through 44)

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1 Petitioner has perpetrated a fraud on the Trademark Trial and Appeal Board by
 2 intentionally misrepresenting material facts in this case regarding standing as well as the dates of
 3 first use anywhere and the date of first use in interstate commerce. On December 1, 2003, Colin
 4 Hurren as President of Petitioner ACM declared that he had never used the name Skin Deep
 5 Laser Med Spas, Inc. as of that date. (Exhibit, pages 14 through 16). Yet in Petitioner's Petition
 6 for Cancellation that was filed subject to the penalties set forth under 18 U.S.C. 1001, Petitioner
 7 alleged a date of first use of September 1, 2003. Lastly, Petitioner has unclean hands since it is
 8 being investigated for California sales tax evasion. According to the letter from Mr. Charles
 9 Cao, Business Taxes Compliance Specialist, "every person engaged in the business of selling
 10 tangible personal property is required to hold a permit for each place of business in this state at
 11 which transactions relating to sales are customarily negotiated with his or her customers."
 12 (Exhibit, pages 17 through 18). Petitioner has sold skin care at its location for five years.

13 Petitioner has violated The California Knox Moscone Act, The California Corporations
 14 Code as well as multiple California Business and Professions Code Sections. These California
 15 laws govern professional corporations, advertising and holding oneself out as practicing
 16 medicine as well as aiding and abetting the unlicensed practice of medicine. (Exhibit, pages 19
 17 through 27). This evidence is further presented in the dispositive Motion for Summary
 18 Judgment. Petitioner ACM is guilty of the illegal medical spa business activity that is
 19 documented on the Medical Board of California's website and coined "rent-a-license".
 20 (Exhibit, pages 28 through 43).

DISCOVERY

21
 22 In good faith, Respondent has provided over 500 plus pages of printed documentation to
 23 Petitioner, including but not limited to a canvas bag, pens, emails, magazines, stationary and
 24 actual audiotapes and CD's of Respondent's "Skin Deep" radio show.

25 Petitioner has not acted in good faith. According to 37 CFR §2.120(d)(1), interrogatories
 26 are to be limited to 75. In order to get around this requirement, Petitioner went on a fishing
 27 expedition and demanded admissions to 93 requests for admissions. Petitioner simply
 28

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1 manipulated the wording of his questions so that an interrogatory could instead be viewed as an
 2 admission instead (since there is no statutory limitation on the number of requests for admissions
 3 a party can pose to another). Since the Trademark Trial and Appeal Board has proposed the
 4 limitation of interrogatories to 25; limitation of admissions to 25 and document production to 15
 5 items (although these limitations are not in effect at this time), it appears that these are the
 6 numbers that the Trademark Trial and Appeal Board appear to be reasonable to accomplish
 7 discovery. Needless to say, Respondent has a good faith belief that the discovery requested is
 8 unreasonably cumulative, irrelevant or duplicative, etc. [Fed.R.Civ.P. 26]. *See Red Wing Co. v.*
 9 *J.M. Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).

10 The burden is on the party seeking the information to establish why it is relevant.
 11 *See Red Wing Co. v. J.M. Smucker Co.*, 59 USPQ2d 1861, 1863(TTAB 2001). Petitioner's
 12 attorney David Hong has never been able to adequately explain why the answers to the
 13 interrogatories and admissions that he compels in this Motion to Compel are relevant. On page
 14 three of his February 28, 2007 letter addressed to Respondent's attorney Brandon Tesser, he
 15 wrote, "I will need to follow up on our reasons why these questions deal with discoverable
 16 topics for this instant proceeding and require a response." (Exhibit, pages 45 through 47).
 17 If attorney Hong needed to get back to Respondent's attorney Tesser on "our reasons why these
 18 questions deal with discoverable topics", there is no good faith legal basis for this discovery.
 19 Over one month later, on March 21, 2007, Petitioner's counsel answered Respondent's counsel's
 20 question regarding the relevancy of the discovery material. In his long-winded ten page letter
 21 replete with circular reasoning and voluminous citations, Petitioner's attorney Hong answered
 22 what he believed the relevancy was for the discovery sought. (Exhibit, pages 48 through 57).

23 Petitioner has never met his burden to show the relevancy of the discovery sought.
 24 Nevertheless, Respondent, in good faith, admitted to requests for admissions numbers 50 and 63.

25 MOTION TO COMPEL ANSWERS TO INTERROGATORIES

26 For over three years, Petitioner's attorney David Hong has known the identity and
 27 location of Sara Herrick. Attorney David Hong has contacted Sara Herrick via telephone at her
 28

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1 place of business in the past. The Interrogatories that Petitioner's attorney has requested involve
2 information that is available and "obtainable from some other source that is more convenient",
3 namely from Sara Herrick. See TBMP 402.02. Over these three long years, Petitioner could
4 have easily noticed and deposed Sara Herrick for a discovery deposition. Not once has Petitioner
5 done so or even attempted to do so. Nevertheless, the requests for answers to interrogatories 21
6 to 23 are irrelevant and moot since Respondent's first legal use anywhere and first legal use in
7 interstate commerce predates Petitioner's alleged date of illegal first use anywhere and illegal
8 first use in interstate commerce, regardless of the assignment of Sara Herrick's common law
9 rights in Skin Deep Skin Care.

10 **MOTION TO COMPEL ADMISSIONS**

11 Discovery is limited to obtaining discovery regarding any matter that is relevant to the
12 claim or defense of any party. The following admissions are not reasonably calculated to lead to
13 the discovery of admissible evidence.

14
15 Request for Admissions 21 through 23 ask for admissions regarding whether or not
16 Respondent believes that microdermabrasion, treatment of acne and cleansing and exfoliation of
17 the skin are categorized as health spa services. These requests for admissions are irrelevant and
18 are not reasonably calculated to lead to the discovery of admissible evidence. The requests are
19 overbroad and improperly seek expert opinions and conclusions. The requests constitute
20 incomplete and/or improper hypothetical questions. The requests call for speculation to the
21 extent they seek information outside Respondent's personal knowledge.

22 RFA 21. Admit that healthspa services include microdermabrasion.

23 RFA 22. Admit that healthspa services include treatment for acne.

24 RFA 23. Admit that healthspa services include cleansing and exfoliation
25 of the skin.

26
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1 Request for Admission 50. This request for admission is irrelevant and is not reasonably
2 calculated to lead to the discovery of admissible evidence. Additionally, the request is vague and
3 ambiguous as to the phrase "type of entertainment service."

4 RFA 50. Admit that the "Skin Deep" radio program is a type of entertainment service.
5

6 Request for Admission 51: This request for admission is irrelevant and is not reasonably
7 calculated to lead to the discovery of admissible evidence. The request is overbroad and
8 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
9 specific as to which "patient" is being referred to.

10 RFA 51: "Admit that Respondent Jeannette Martello as a licensed California physician
11 must perform a good faith in-person examination of a patient or of the patient's records before
12 providing medical or physician services to the patient."
13

14 Request for Admission 52: This request for admission is irrelevant and is not reasonably
15 calculated to lead to the discovery of admissible evidence. The request is overbroad and
16 constitutes an incomplete and/or improper hypothetical question. The request is vague,
17 ambiguous and non-specific as to which "caller" is being referred to.

18 RFA 52: "Admit during Respondent Jeannette Martello's "Skin Deep" radio program,
19 the Respondent cannot confirm whether a caller to her program is reporting accurate or truthful
20 information during the radio show."
21

22 Request for Admission 53: This request for admission is irrelevant and is not reasonably
23 calculated to lead to the discovery of admissible evidence. The request is overbroad and
24 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
25 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
26 specific as to which "patient" is being referred to.
27
28

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1 RFA 53: "Admit that a good faith in-person examination of a patient enhances the
2 opportunity for a physician to confirm if a patient needs a certain medication or treatment."
3

4 Request for Admission 54: This request for admission is irrelevant and is not reasonably
5 calculated to lead to the discovery of admissible evidence. The request is overbroad and
6 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
7 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
8 specific as to which "patient" is being referred to.

9 RFA 54: "Admit that a good faith in-person examination of a patient enhances the
10 opportunity for a physician to confirm the suspected medical conditions."
11

12 Request for Admission 55: This request for admission is irrelevant and is not reasonably
13 calculated to lead to the discovery of admissible evidence. The request is overbroad and
14 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
15 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
16 specific as to which "patient" is being referred to.

17 RFA 55: "Admit that a good faith in-person examination of a patient enhances the
18 opportunity for a physician to advise the patient of alternative treatment options and to determine
19 if the patient is aware of potential side effects."
20

21 Request for Admission 56: This request for admission is irrelevant and is not reasonably
22 calculated to lead to the discovery of admissible evidence. The request is overbroad and
23 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
24 improperly seeks expert opinions and conclusions. The request is vague, ambiguous and non-
25 specific as to which "patient" is being referred to.

26 RFA 56: "Admit that a good faith in-person examination of a patient enhances the
27 opportunity to rule out other medical conditions."
28

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1 Request for Admission 71: This request for admission is irrelevant and is not reasonably
2 calculated to lead to the discovery of admissible evidence. The request is overbroad and
3 constitutes an incomplete and/or improper hypothetical question. Additionally, the request
4 improperly seeks expert opinions and conclusions. The request is vague and ambiguous as to the
5 phrase "look for". This request calls for speculation in that it seeks matters outside of
6 Respondent's personal knowledge.

7 RFA 71: Admit that listeners of the radio show SKIN DEEP look for Dr. Jeannette
8 Martello, M.D., in So. Pasadena, CA.

9
10 Request for Admission 72: This request for admission is irrelevant and is not reasonably
11 calculated to lead to the discovery of admissible evidence. The request is overbroad and calls for
12 speculation in that it seeks matters outside of Respondent's personal knowledge.

13 RFA 72: "Admit that looking up the terms "Skin Deep" on the Yahoo.com Yellow Pages
14 for the Pasadena, CA location, the search results list "Skin Deep Lazor [id] Med Spa," 425 South
15 Fair Oaks Avenue, Pasadena, CA 91105.

16
17 CONCLUSION

18 Respondent therefore respectfully requests a Motion for a Protective Order and for a
19 Motion to Stay Discovery since Respondent believes that the discovery requested is
20 unreasonably cumulative, irrelevant or duplicative [Fed.R.Civ.P. 26]. *See Red Wing Co. v. J.M.*
21 *Smucker Co.*, 59 USPQ2d 1861 (TTAB 2001).

22 Furthermore, Petitioner's attorney has filed this Motion to Compel without good faith
23 legal basis. Petitioner's attorney has filed this Motion to Compel for improper purposes such as
24 to harass Respondent and cause unnecessary delay and needlessly increase the cost of litigation
25 as he has done on two prior eleventh hour occasions.

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1 Respondent shall transmit said dispositive Motion for Summary Judgment. Respondent
2 respectfully requests that the Trademark Trial and Appeal Board review said Motion for
3 Summary Judgment since it has a valid basis of disposing of the case at hand and to do so would
4 not be prejudicial to the Petitioner.

5 The undersigned being warned that willful false statements and the like are
6 punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful
7 false statements and the like may jeopardize the validity of the application or document or
8 any registration resulting therefrom, declares that all statements made of her own knowledge
9 are true; and all statements made on information and belief are believed to be true.

10 I declare under penalty of perjury under the laws of the State of California
11 and the laws of the United States of America that the above is true and correct.

12 Executed on March 5, 2009 in South Pasadena, California.

13 *Jeannette Martello*
14 *M.D.*

15 DATED: March 5, 2009

16 In the interests of justice and efficiency.

17 Respectfully,

18 By: /jeannette martello, m.d./

19 Jeannette Martello, M.D.

20 Respondent

21 In Pro Per

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1 JEANNETTE MARTELLO, M.D.
2 701 Fremont Avenue
3 South Pasadena, CA 91030
4 Telephone: (626) 403-1747
5 Facsimile: (626) 403-1784

6 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
7 THE TRADEMARK TRIAL AND APPEAL BOARD

8 ACM ENTERPRISES, INC.,) Cancellation No. 92044697
9)
10 Petitioner,) Filed March 5, 2009
11 vs.)
12 JEANNETTE MARTELLO, M.D.,)
13 Respondent)
14)

15 DECLARATION OF JEANNETTE MARTELLO IN SUPPORT OF
16 RESPONDENT'S OPPOSITION TO MOTION TO COMPEL
17 MOTION FOR PROTECTIVE ORDER
18 MOTION FOR STAY OF DISCOVERY
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Cancellation No. 92044697
Declaration of Martello
Opp. to Motion to Compel
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COVER PAGE

1 1. My name is Jeannette Martello, M.D., J.D. and I am representing myself in pro per for
2 Respondent Jeannette Martello, M.D. My business address is 701 Fremont Avenue, South
3 Pasadena, CA 91030. I am fully competent to make this declaration, and I have personal
4 knowledge of the facts stated in this declaration. To my knowledge, all of the facts stated in
5 this declaration are true and correct.

6 2. I declare that this is a true and complete copy of the March 3, 2008 letter written by
7 Respondent's previous attorney, Brandon Tesser to Petitioner's attorney, David Hong on
8 March 3, 2008 as well as the fax transmission cover sheet and proof of fax transmission.
9 Exhibit pages 1 through 3.

10 3. I declare that this is a true and complete copy of the March 3, 2008 email written by
11 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser.
12 Exhibit pages 4 through 5.

13 4. I declare that this is a true and complete copy of the March 12, 2008 letter written by
14 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser.
15 Exhibit pages 6 through 9.

16 5. On February 14, 2009, I performed a computer search on the Google search engine
17 for California code. The following website was encountered: [http://www.leginfo.ca.gov/cgi-](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64770824239+1+0+0&WAISaction=retrieve)
18 [bin/waisgate?WAISdocID=64770824239+1+0+0&WAISaction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64770824239+1+0+0&WAISaction=retrieve). Research was
19 performed on fictitious names and Business and Professions Code Sections 2285 and 2415
20 were found. Exhibit pages 10 through 13.

21 6. I declare that I personally drove down to Norwalk, California to the Los Angeles
22 County Recorder and Clerk's office to obtain a certified copy of the Fictitious Name Statement
23 application for Skin Deep Laser Med Spas, Inc. Exhibit pages 14 through 16.

24 7. I declare that I contacted the California State Board of Equalization to find out if Skin
25 Deep Laser Med Spa had a seller's permit. When it was discovered that Skin Deep Laser Med
26 Spa did not have a seller's permit for its 425 S. Fair Oaks Avenue, Pasadena, CA 91105
27 location, I was instructed to contact the California State Board of Equalization Compliance

28

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1 Unit in West Covina, California. I spoke with Mr. Charles Cao and asked for documentation
2 on whether or not a seller's permit was on file with the California State Board of Equalization
3 for the location of 425 South Fair Oaks Avenue, Pasadena, CA 91105. Exhibit pages 17
4 through 18.

5 8. On February 14, 2009, I performed a computer search on the Google search engine
6 for California code. The following website was encountered: <http://www.leginfo.ca.gov>..
7 Research was performed on professional corporations. California Corporations Code Sections
8 13403, 13406 and 13407 were discovered. Exhibit pages 19 through 22.

9 9. On February 14, 2009, I performed a computer search on the Google search engine
10 for California code. The following website was encountered: [http://www.leginfo.ca.gov/cgi-
11 bin/waisgate?WAISdocID=64736223737+1+0+0&WAISaction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=64736223737+1+0+0&WAISaction=retrieve). Research was
12 performed on the practice of medicine. Business and Professions Code Sections 2052 and
13 2054 were found. Exhibit pages 23 through 25.

14 10. On February 14, 2009, I performed a computer search on the Google search engine
15 for California code. The following website was encountered: <http://www.leginfo.ca.gov>..
16 Research was performed on medical corporations. Business and Professions Code Sections
17 2408 and 2409 were found. Exhibit pages 26 through 27.

18 11. On February 28, 2009, while renewing my medical license on the Medical Board of
19 California website, <http://www.medbd.ca.gov/licensee/Index.html>, two subsections under the
20 Licensees section were reviewed. One subsection was entitled "Lasers & Botox". The other
21 subsection was entitled "Medical Spas". Exhibit pages 28 through 33.

22 12. On February 14, 2009, I reviewed the Medical Board of California website,
23 http://www.mbc.ca.gov/licensee/fictitious_name_questions.html. I found the Fictitious Name
24 Permit—Frequently Asked Questions section. Exhibit, pages 34 through 44.

25 13. I declare that this is a true and complete copy of the February 28, 2007 letter written by
26 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser. Exhibit
27 pages 45 through 47.

28

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1 14. I declare that this is a true and complete copy of the March 21,2007 letter written by
2 Petitioner's attorney, David Hong to Respondent's previous attorney, Brandon Tesser. Exhibit
3 pages 48 through 57.

4 The undersigned being warned that willful false statements and the like are
5 punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful
6 false statements and the like may jeopardize the validity of the application or document or
7 any registration resulting therefrom, declares that all statements made of her own knowledge
8 are true; and all statements made on information and belief are believed to be true.

9 I declare under penalty of perjury under the laws of the State of California
10 and the laws of the United States of America that the above is true and correct.
11 Executed on March 5, 2009 in South Pasadena, California.

12 *Jeannette Martello*
13
14 DATED: March 5, 2009
15 In the interests of justice and efficiency.

16 Respectfully,

17 By:/jeannette martello, m.d./
18 Jeannette Martello, M.D.
19 Respondent
20 In Pro Per

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WELCOME TO
THE MEDICAL BOARD OF CALIFORNIA
Department of Consumer Affairs

p.1

[Home](#) » [Licensee](#) » [Fictitious Name Questions](#)

Fictitious Name Permit - Frequently Asked Questions

1. When do I need a fictitious name permit?
2. When do I not need a fictitious name permit?
3. Are there specific name style requirements for fictitious name permits?
4. What is the fee?
5. How do I get a copy of my fictitious name permit?
6. How do I renew my current permit?
7. When choosing a fictitious name, what are some tips to increase the chance of the name being approved?
8. Are words allowed that are not in English?
9. If an FNP is issued by the Medical Board, am I still required to file for a fictitious name with my local county and city agencies?
10. Once I apply for and receive my fictitious name permit, are there any other permits or certificates of registration that are required from the Medical Board?
11. Can you have more than one location for each FNP?
12. Is there a limit as to how many FNPs a physician may own?
13. How can the fictitious name be changed?
14. Is the FNP transferable if a medical practice is purchased by another physician?
15. Can shareholders or partners be added or deleted from the permit?
16. Can an osteopath be issued an FNP by the Medical Board?
17. Can a lay person be an owner or partial owner of an FNP?
18. What type of corporation is necessary to meet the requirements for an FNP?
19. Are Limited Liability Partnerships (LLPs) and Limited Liability Corporations (LLCs) allowed?
20. Who can form a partnership with a physician to practice medicine?
21. Does a non-profit corporation meet the requirements for an FNP?
22. If I apply as a corporation, do I need to incorporate with the Secretary of State before I apply for my FNP?
23. If I receive my corporate name from the Secretary of State and plan on advertising under the same fictitious name, do I still need to get an FNP from the Medical Board?
24. Do I need an FNP for my corporate name if I receive a corporate name from the Secretary of State and will not advertise with that name?
25. Do I need to inform the Medical Board if I amend my corporate name at a future time?
26. Who can be an owner of a professional medical corporation?
27. How long will it take to get a fictitious name permit?
28. Does it speed up the review process if I hand deliver the application in person?
29. How do I notify the Board of a change of address?
30. What if I decide to cancel my permit?
31. What if I change the way I am doing business? For instance, changing from a sole proprietor to a corporation.
32. What if I have paid the renewal fees on my current permit but did not receive a new permit?
33. What should I do if a hold has been placed on my permit?
34. What if I am no longer using the permit and choose not to renew it?
35. What happens if my application is reviewed and the proposed name is not available/allowed or other problems are discovered?

Mar 05 09 10:45p

http://www.mbc.ca.gov/licenses/fictitious_name_questions.html

2/14/2005

- 36. Are there any medical practices that are exempt from needing an FNP?
- 37. If I am advertising under my own name, and want to let the public know what I specialize in, is a fictitious name permit required?
- 38. Can a permit be issued to a physician who is not licensed in California?
- 39. If the physician would like to change his/her own name, is applying for an FNP the correct procedure?
- 40. If a similar fictitious name permit was previously issued by the Board, but is in delinquent status (unpaid renewal fees), is the fictitious name permit still valid?
- 41. Does the Board need to be notified if there is an employee change to the permit?
- 42. Is it OK to advertise a shortened version of the fictitious name?
- 43. Does a hospital corporation or surgery center having a Department of Health Services Certification and/or licensure need to obtain a fictitious name permit from the Medical Board of California?

1. When do I need a fictitious name permit?

If you are a licensed physician and surgeon, or podiatrist, practicing under a fictitious, false or assumed name in any public communication, advertisement, sign or announcement. Example: "Sunrise Medical Group."

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2. When do I not need a fictitious name permit?

If only the name or surname (last name) of the physician or podiatrist is used, followed by Medical Doctor, M.D., Podiatrist, Doctor of Podiatric Medicine, D.P.M., Medical Corporation, Medical Corp., Podiatry Corporation, Podiatry Corp., Professional Corporation, Prof. Corp., Corporation, Corp., Incorporated or Inc. Examples: "John Doe Medical Corporation" or "John Doe, M.D. Inc." would not require a fictitious name permit as long as John Doe matches the legal name on the physician's medical license.

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3. Are there specific name style requirements for fictitious name permits?

The proposed name cannot be misleading, deceptive, confusing, or similar to a previously issued name. A doctor of podiatric medicine must include the designation (word) "podiatric," "podiatry," "podiatrist," "foot" or "ankle." (Title 16, Division 13.9, Section 1399.688(b) of the California Code of Regulations.)

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4. What is the fee?

A \$50 non-refundable processing fee is required, with a renewal fee of \$40 every two years. The check should be made payable to the Medical Board of California. A renewal notice automatically will be mailed to the practice address approximately 90 days before the permit expires.

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5. How do I get a copy of my fictitious name permit?

Click on Application for a Duplicate Fictitious Name Permit and download (print) the document. Complete it and mail it along with the fee to the address listed on the application. Or, you may print out an Internet verification of the permit by clicking the License Search for Fictitious Name Permit and downloading (printing) the document.

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6. How do I renew my current permit?

Approximately 90 days before the permit expires, you will receive a renewal notice in the mail. If you do not receive your notice or have lost the notice, you may use the form titled Fictitious Name Permit Notification of Renewal/Hold/Release. The usual fee is \$40, every two years. If the permit has become delinquent, an additional fee of \$20 is required for a total of \$60. To check the status of the permit, click on "License Search for Fictitious Name Permit." If the permit has been expired for more than 30 days past the expiration date, the total fee would be \$60. If the permit is less than 30 days past the expiration date, the fee would be \$40.

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7. When choosing a fictitious name, what are some tips to increase the chance of the name being approved?

Before selecting a fictitious name, visit our link License Search for Fictitious Name Permit to determine the availability of a fictitious name. Try to avoid names which include initials, abbreviations, acronyms, symbols or misspellings. Stay away from names which only contain generic medical words or terms. If the name is original/common, chances are it has already been issued. Remember, you are competing with physicians not only in your immediate city or county, but the entire state of California. If you already have an FNP and are applying for a different name, do not attempt a name which is similar to the one you already have for the purpose of public recognition. As stated above, the criteria for approving a name is that it not be deceptive, misleading, confusing or similar to a name which has already been issued, regardless of who owns the similar name.

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8. Are words allowed that are not in English?

Yes, keep in mind that the same name style requirements apply, as stated above. Be sure to include, on a separate attachment, the English translation of all non-English words.

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9. Can an FNP be issued by the Medical Board, am I still required to file for a fictitious name with my local county and city agencies?

Yes, an FNP is issued by the Medical Board, am I still required to file for a fictitious name with my local county and city agencies? The Medical Board is a state agency and, as such, cannot provide an answer regarding local requirements. The answer may be

http://www.mbc.ca.gov/licensee/fictitious_name_questions.html

different, depending upon where the physician is practicing medicine.

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10. Once I apply for and receive my fictitious name permit, are there any other permits or certificates of registration that are required from the Medical Board?

No. As long as the physician's medical license is renewed and current, the Board does not require anything further. For questions regarding corporations, contact the Secretary of State at (916) 657-5448.

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11. Can you have more than one location for each FNP?

Yes. As long as the fictitious name is exactly the same at each location and the owners notify the Medical Board in writing of each practice address. The Board's data system can only reflect two practice addresses. Additional addresses will be added to the hard copy file.

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12. Is there a limit as to how many FNPs a physician may own?

No, as long as the names are different from each other. A separate application must be submitted for each fictitious name. Physicians doing business as a corporation also may file for multiple permits under the same corporation.

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13. How can the fictitious name be changed?

If the new name is similar to the issued name, the current permit must be cancelled and the applicant must reapply for the new name. Complete the forms Application for Cancellation of a Fictitious Name Permit and Fictitious Name Permit Application. Both forms should be mailed at the same time.

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14. Can the FNP transferable if a medical practice is purchased by another physician?

No. The former owner must submit an Application for Cancellation of a Fictitious Name Permit to cancel the permit and the new owner must submit a Fictitious Name Permit Application. Both forms should be mailed at the same time to assure the name will be available to the new owner.

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15. Can shareholders or partners be added or deleted from the permit?

Yes. If there are multiple owners of the permit, and you would like to associate or disassociate shareholders or partners, complete the Fictitious Name Permit Notification of Shareholders Change (if a corporation), or Fictitious Name Permit Notification of Partnership Change (if a partnership) form and mail it to the Medical Board.

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16. Can an osteopath be issued an FNP by the Medical Board?

Yes, but a physician licensed by the Medical Board must own more than 50% of the practice. If the osteopath or any combination of osteopaths owns more than 50%, the permit must be issued by the Osteopathic Medical Board of California. They can be contacted at (916) 263-3100.

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17. Can a lay person be an owner or partial owner of an FNP?

No.

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18. What type of corporation is necessary to meet the requirements for an FNP?

The Medical Board can only accept corporations which are formed in California and are professional medical corporations. No out-of-state (foreign), limited liability, or general corporations are allowed.

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19. Are Limited Liability Partnerships (LLPs) and Limited Liability Corporations (LLCs) allowed?

Physicians cannot practice medicine as LLPs or LLCs.

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20. Who can form a partnership with a physician to practice medicine?

Physicians may only be partners with other physicians and osteopaths.

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21. Does a non-profit corporation meet the requirements for an FNP?

No. Non-profit corporations do not fall under the jurisdiction of the Medical Board. Only professional medical corporations are qualified for FNPs.

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22. If I apply as a corporation, do I need to incorporate with the Secretary of State before I apply for my FNP?

Yes. The Board requires a copy of the Articles of Incorporation to insure that the corporation is active and is a professional medical corporation. If a corporate name is issued by the Secretary of State and is not available as a fictitious name, the physician has the option of amending the corporate name to match the fictitious name. This amendment should be done after the fictitious name has been issued by the Board. The corporate name may be different from the fictitious name.

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23. If I receive my corporate name from the Secretary of State and plan on advertising under the same fictitious name, do I still need to get an FNP from the Medical Board?

Yes. The approval of the corporate name does not give permission to advertise that name to the public if it is a fictitious name.

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24. Do I need an FNP for my corporate name if I receive a corporate name from the Secretary of State and will not advertise with that name?

No. A Fictitious Name Permit is not required as long as the corporate name is not seen by the general public.

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25. Do I need to inform the Medical Board if I amend my corporate name at a future time?

No.

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No. The Board would only need to be notified if there is a complete change of the corporation. This would only apply to physicians who have an FNP with the Board. Any other corporate matters should be addressed to the Secretary of State. They can be reached at (916) 657-5448.

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26. Who can be an owner of a professional medical corporation?

At least 51% of the shares must be owned by a licensed physician and surgeon. The remaining 49% may be owned by: podiatrists, psychologists, registered nurses, optometrists, marriage and family therapists, clinical social workers, physical assistants, chiropractors, acupuncturists, or naturopathic doctors. The number of these licensed persons cannot exceed the number of physicians and cannot exceed a combined share total of 49%. A lay (unlicensed) person cannot own any shares of a medical corporation.

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27. How long will it take to get a fictitious name permit?

From the time that the application is received, approximately four to six weeks. The Board has no provision to expedite the review of an application. The application must be reviewed in the order in which it was received.

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28. Does it speed up the review process if I hand deliver the application?

No. The application still will be reviewed in the order in which it was received, whether received in the mail or hand delivered.

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29. How do I notify the Board of a change of address?

Complete and mail the form entitled, Fictitious Name Permit-Change of Address Form. The form must be signed by a current owner of the permit.

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30. What if I decide to cancel my permit?

Complete the form entitled, Application for Cancellation of a Fictitious Name Permit. The form must be signed by at least one physician who is recognized by the Board as being a current owner. Mail the form to the address listed at the top of the application. There is no fee to cancel the permit.

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31. What if I change the way I am doing business? For instance, changing from a sole proprietor to a corporation.

You must reapply for a new FNP. Submit an Application for Cancellation of a Fictitious Name Permit to cancel the existing permit and include a Fictitious Name Permit Application to reapply for the new permit. Make sure to mail the two forms together to assure the name will be available.

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32. What if I have paid the renewal fees on my current permit but did not receive a new permit?

You may have had a change of address or failed to complete the renewal form in its entirety. When this happens, the fees still are collected by the cashiering unit but a hold is sometimes placed on the permit. This insures that the new permit is not mailed to an incorrect address and that an unauthorized person has not signed for the renewal of the permit. Please see next question.

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33. What should I do if a hold has been placed on my permit?

Complete and mail to the Board the form entitled, Fictitious Name Permit Notification of Renewal/Hold Release. The form must be signed by a physician who is recognized by the Board as being a current owner.

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34. What if I am no longer using the permit and choose not to renew it?

If the permit is not renewed, it will fall into delinquent status. If the permit has not been renewed for five years, the system is programmed to automatically cancel the permit as required by law. The owner of the permit has the option of submitting an Application for Cancellation of a Fictitious Name Permit at any time. No fee is charged to cancel the permit.

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35. What happens if my application is reviewed and the proposed name is not available/allowed or other problems are discovered?

At the application has been reviewed, the permit will be issued and mailed to the applicant or a notice will be sent indicating deficiencies that need to be corrected for the

permit to be approved. If the name is not available, call the FNP coordinator at the phone number provided on the deficiency notice to discuss possible changes in the name. After you speak with the coordinator, alternate names may be faxed for review and the application will be given priority over applications which have not been reviewed. Be sure to make the corrections on the original applications. You may write out or cross out mistakes; just be sure the application is still legible. Once the corrections have been made and the application has been received by the Board, the permit is usually issued within seven to 10 days.

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36. Are there any medical practices that are exempt from needing an FNP?

Yes. Hospitals, medical schools, licensees who contract with, are employed by, or are on the staff of any clinic licensed by the Department of Health Services, including long-term care facilities, non-profit organizations, narcotic treatment programs and outpatient surgery settings granted a certificate of accreditation from the following accreditation agencies approved by the Medical Board are not required to obtain a fictitious name permit. The four approved accreditation agencies are: "The Institute for Medical Quality," "Association for Ambulatory Health Care," "American Association for Accreditation of Ambulatory Surgery Facilities, Inc." and "Joint Commission on Accreditation of Healthcare Organizations."

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37. Can an advertising under my own name, and want to let the public know what I specialize in, is a fictitious name permit required?

No. as long as the specialty listed is not part of the name you are advertising. Example: JOHN DOE, M.D. (Specializing in Pediatrics) would not require a permit. JOHN DOE, M.D. PEDIATRIC SPECIALTY would require a permit.

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38. Can a permit be issued to a physician who is not licensed in California?

No.

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39. If the physician would like to change his/her own name, is applying for an FNP the correct procedure?

No. The physician should complete the Board's Notification of Name Change application to change his/her name on the medical license.

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40. If a similar fictitious name permit was previously issued by the Board, but is in delinquent status (unpaid renewal fees), is the name available?

No. The current permit must be cancelled before the name can be issued.

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41. Does the Board need to be notified if there is an employee change to the permit?

No. The Board only needs to be notified if there is a change of shareholders or partners.

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42. Is it OK to advertise a shortened version of the fictitious name?

No. The entire name as it appears on the permit must be on all advertisements and materials seen by the public.

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43. Does a hospital corporation or surgery center having a Department of Health Services Certification and/or licensure need to obtain a fictitious name permit from the Medical Board of California?

No. It is not necessary, pursuant to Business and Professions Code section 2285 (b) and (c) and 2415 (d). Only a physician and surgeon or doctor of podiatric medicine who is a sole proprietor, or in a partnership, group, or professional corporation, may obtain a fictitious name permit issued by the Board.

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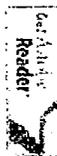
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- Fictitious Name Permit - Notification of Partnership Change
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