

IN THE MATTER OF

MEDICAL MARKETING SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3409. Complaint, Jan. 12, 1993--Decision, Jan. 12, 1993*

This consent order prohibits, among other things, a Florida firm and its founder from misrepresenting in advertising or promotional materials -- with respect to any chemical face peel procedure or any health care service -- the degree of risk, level of pain, recovery period, or results associated with the procedure; any entity's approval or endorsement of the procedure; or any training the respondents provide for the procedure and services.

Appearances

For the Commission: *Richard F. Kelly* and *Renate Kinscheck*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Medical Marketing Services, Inc., a corporation, and Michael Walerstein, individually and as an officer of Medical Marketing Services, Inc., (hereinafter "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Medical Marketing Services, Inc. (hereinafter "MMS") is a Florida corporation. Its office and principal place of business was located at 860, Southwest 89th Terrace, Plantation, Florida.

(b) Respondent Michael Walerstein (hereinafter "Walerstein") is the founder, president and sole stockholder of MMS. He directs, controls, and formulates the acts and practices of the corporate

respondent, including the acts and practices alleged in this complaint. Respondent's address is 3101 Port Royale Blvd., Apt. 217, Fort Lauderdale, Florida.

PAR. 2. Since at least early 1986, and continuing thereafter, respondents have promoted and sold training and marketing services relating to a chemical face peel procedure respondents refer to as "Endodermology." Respondents have promoted and sold their services to licensed physicians (hereinafter "clients") throughout the United States through correspondence and other written materials. Respondents have provided clients with a promotional kit consisting of advertising materials, brochures, a video tape, sample sales scripts, press releases, direct mail letters, fact sheets and other promotional materials (hereinafter "promotional materials") that contain information about the aforementioned chemical face peel (hereinafter "peel procedure"), for the clients' use in marketing the peel procedure to the public. These promotional materials include, but are not necessarily limited to, the attached Exhibits A through F.

PAR. 3. The acts and practices of respondents alleged in this complaint are and have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' promotional materials contain statements concerning the safety, efficacy and nature of the peel procedure, including the following:

- (a) "Non-surgical, safe, effective procedure performed only by trained physicians." [Exhibit A]
- (b) "... it is a completely safe ... method." [Exhibit B]
- (c) "Everyone has a different tolerance for pain. A little itch was the only discomfort I had. ... Some felt a little sunburn or a little itch." [Video text]
- (d) "... this safe and painless way of reversing the aging process." [Exhibit C]
- (e) "Yes. You CAN look younger in just 8 days. Imagine the benefits of NON-SURGICAL FACIAL REJUVENATION." [Exhibit D]
- (f) "Effective in ... removing wrinkles, lines, spots and folds in the face." [Exhibit E]
- (g) "As opposed to a chemical peel, Endodermology is designed to evenly reach certain layers of the epidermis that have been affected by aging or the environment" [Exhibit F]

(h) "RECOGNIZED PROCEDURE . . . accepted by the American Medical Association (AMA)" [Exhibit E]

PAR. 5. By and through the statements in the preceding paragraph and others not specifically set forth herein of similar import and meaning, respondents have, directly or by implication, represented the following:

(a) The peel procedure is free of the risk of serious adverse medical complications. In fact, the peel procedure is not free of the risk of serious adverse medical complications.

(b) The peel procedure involves little or no pain or discomfort. In fact, for many people, the peel procedure involves significant pain or discomfort.

(c) The peel procedure involves a recovery period of eight days. In fact, the peel procedure typically involves a recovery period of more than eight days.

(d) The peel procedure eliminates facial folds of skin. In fact, the peel procedure does not eliminate facial folds of skin.

(e) The peel procedure is not a chemical face peel. In fact, the peel procedure is a chemical face peel.

(f) The peel procedure is accepted or recognized by the American Medical Association. In fact, the peel procedure is not accepted or recognized by the American Medical Association.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 6. By and through the statements set forth in paragraph four referring to the safety of the peel procedure, and others not specifically set forth herein of similar import and meaning, respondents have represented, directly or by implication, that the peel procedure is unqualifiedly safe. Respondents have failed to disclose that the peel procedure entails a risk of serious adverse complications. In light of respondents' representation that this procedure is unqualifiedly safe, such failure to disclose is a deceptive omission of material fact.

PAR. 7. Respondents' promotional materials feature a "before" and "after" photograph of a woman and, in juxtaposition therewith, a caption "IMAGINE LOOKING YOUNGER In just 8 days." By and through these promotional materials, respondents have represented, directly or by implication, that the "after" photograph accurately depicts the likely condition of the typical patient's skin within eight days of when the peel procedure is administered.

PAR. 8. In fact, the "after" photograph referred to in the preceding paragraph does not accurately depict the likely condition of the typical patient's skin within eight days of when the peel procedure is administered. As opposed to the representation in the "after" photograph, the typical patient's skin is likely to be quite red and swollen at the end of eight days. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. By and through the aforesaid acts and practices, respondents engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

**LOOK YOUNGER IN 1988
THAN YOU DID
IN 1978**



BEFORE AFTER

A YOUNGER LOOKING YOU

Non-surgical, safe, effective procedure performed only by trained physicians.
A new appearance can be yours in days.



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EXHIBIT B

**RECEPTIONIST AND TELEPHONE
INFORMATION REQUESTS**

Receptionist: "Good Morning/Afternoon"
Patient: "I saw your advertisement and would like to find out more about it."
Receptionist: "Terrific, I'll set up an appointment for you with our Consultant. This is a free, no obligation consultation. Do you prefer mornings or afternoons?"
Check Appointment Book and tell caller when you have an opening.
Patient: "How much does it cost?"
Receptionist: "Unfortunately, it is virtually impossible to give you costs without our Consultant seeing you, as each person has individual problems and must be seen in order to evaluate his/her particular problem area."
Patient: "You must be able to give me some idea of the cost..."
Receptionist: "It ranges from ____ to ____ depending on your needs."
(Doctor to supply price range prior to consultation.)
Patient: "I can't come in, I'm working, etc."
Receptionist: "We are open on _____ evenings or Saturdays. Is that convenient for you?"
Patient: I'd like to know something more about it before I come in."
Receptionist: It is a non-surgical procedure performed by our Doctor in the office. It removes wrinkles, blemishes, age spots, so in just 8 days you can look 10-15 years younger and it is a completely safe, reliable and effective method that has been in existence for over 60 years. I would like for you to come in and meet with our consultant who has had the procedure done and talk to her. She can answer any questions that you might have. Of course, this is a free, no obligation appointment. Would you prefer to come in during the day or in the evening?

If patient still hesitates to make an appointment, say:

"I can send you a brochure if you like, explaining our process."

Get name, address and telephone number. Mail brochure with an Enclosure Letter. Record information on the daily Information Calls form and give these to the Consultant at the end of each week.

EXHIBIT C

Sample Announcement of Seminars for General Public

(place on company letterhead)

(date)

Contact: (name, telephone number)

Cosmetic Facial Rejuvenation Seminar in (City)

(City, State) -- (Company Name) is sponsoring a free seminar on Endodermology -- a medical, non-surgical cosmetic facial rejuvenation process that can remove up to 15 years from one's appearance. The seminar will be held (date) from (hours) at the (place), (address) in (city).

The seminar will focus on our society's desire for a youthful appearance and how it can be accomplished through this safe and painless way of reversing the aging process. Persons who have undergone the treatment will be available with Dr. (Name) of the (company name) to answer your questions. A reception will follow. For reservations call (phone) in (city).

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EXHIBIT D

IMAGINE LOOKING YOUNGER In just 8 days



BEFORE



AFTER

Yes. You CAN look younger in just 8 days. Imagine the benefits of NON-SURGICAL FACIAL REJUVENATION.

A proven and effective medical procedure is available now under the complete supervision of LICENSED PHYSICIANS.

A technique designed to remove wrinkles and blemishes from your face as well as 5, 10, or even 20 years from your appearance.

Consider the benefits of NON-SURGICAL FACIAL REJUVENATION to your face...and to your life.

Call now for your CONSULTATION.
NO FEE.
NO OBLIGATION.



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EXHIBIT E

Endodermology™ Fact Sheet
(May Accompany Your Press Release)

(Place on Company Letterhead)

- EXPLANATION: Medically approved non-surgical, cosmetic facial rejuvenation procedure
- PROCESS:
1. solution applied to face
 2. area sealed with surgical paper tape mask
 3. mask removed and replaced by powdered mask
 4. powdered mask removed eight days later
- BENEFITS: Effective in:
- restoring sun-damaged skin
 - removing wrinkles, lines, spots, and folds in the face
 - stimulates deeply embedded dormant skin cells
- RESULTS:
- glowing fresh, smooth, soft and firm textured skin
 - can remove 5, 10 to 15 years from face
 - enduring effects of treatment continue as age process resumes
- LOCATION OF TREATMENT AND RECOVERY:
- Eight - Day procedure
- treatment is performed in physician's office
 - recovery period in aftercare facility
- RECOGNIZED PROCEDURE:
- accepted by the American Medical Association (AMA)
 - chemicals used approved by Food and Drug Administration

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EXHIBIT E

FOUNDED:

The basic procedure had its beginnings in Europe and was brought to America in the early part of the century by German dermatologists. Over the years, the procedure has been modified and improved to its present state of effectiveness.

- (company name)
(address)
(telephone)
- (physician's name)
(physician's credentials)
- (consultant's name)

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EXHIBIT F

SAMPLE GENERAL ENDODERMOLOGY™ RELEASE

(place on company letterhead)

(Date)

CONTACT: (name, phone)

THE MIRACLE OF ENDODERMOLOGY™

(City, State)--

Nature deals us a harsh blow, as age and the effects of the sun creep into the body -- particularly the face.

In this day and age, people are now feeling younger and working hard at looking as young as they feel. You can shape up a body but it's virtually impossible to hide a sun or age-ravaged face.

Thanks to a process called Endodermology,™ the clock of nature can be turned back by 10-20 years in both men and women who are experiencing the manifestation of wrinkles, spots or roughness of the skin's epidermis. A safe, non-surgical face rejuvenation procedure, Endodermology,™ works on the outer layers of skin. As opposed to a chemical peel, Endodermology™ is designed to evenly reach certain layers of the epidermis that have been affected by aging or the environment (sun, wind or pollution).

The most remarkable aspect of Endodermology™ is the enduring effects of the process. Soft, smooth, glowing skin replaces the old skin for years following treatment. As the aging process resumes, the patient will always look 10-20 years younger.

Endodermology,™ performed by a select group of medical doctors throughout the country, is becoming one of the most popular forms of age rejuvenation procedures in the United States.

Dr. (name, M.D. or D.O.) (name of Company), based in (City, State) offers the Endodermology™ process in the (city) area. Dr. (name) is located at (address).

For further information on Endodermology™ contact Dr. (name) at the (company name, phone).

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof and the respondents having been furnished thereafter with a copy of a draft complaint, which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and,

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Marketing Services, Inc. ("MMS") is a Florida corporation. Its office and principal place of business was located at 860 Southwest 89th Terrace, Plantation, Florida.

2. Respondent Michael Walerstein is the founder, president and sole stockholder of MMS. He directs, controls and formulates the acts and practices of MMS, including the acts and practices alleged in the complaint herein. Respondent's address is 3101 Port Royale Blvd., Apt. 217, Fort Lauderdale, Florida.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the term “*chemical face peel procedure*” (hereafter “peel procedure”) shall mean the application of a chemical solution containing phenol, or other solution having a similar effect, to the skin to destroy the top layers of the skin.

I.

It is ordered, That respondents, Medical Marketing Services, Inc., a corporation, its successors and assigns, and its officers, and Michael Walerstein, individually and as an officer of said corporation, and respondents’ agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale or sale of any peel procedure or any other health care service; in connection with the advertising, promotion, offering for sale or sale of any training in performing any peel procedure or any other health care service; or in connection with the advertising, promotion, offering for sale or sale of any service in marketing any peel procedure or any other health care service, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, that:

1. Any peel procedure is free or virtually free of the risk of serious adverse medical complications.

2. Any peel procedure involves little or no pain or discomfort.
3. Any peel procedure involves a recovery period consisting of only a few days.
4. Any peel procedure eliminates facial folds of skin.
5. Any peel procedure is not a chemical face peel.
6. Any peel procedure is accepted or recognized by the American Medical Association.

B. Making any representation, directly or by implication, about the safety of any peel procedure, or any other health care service which entails serious adverse risks, unless respondents clearly and prominently disclose in close proximity to any such representation that such procedure or service entails adverse risks.

C. Misrepresenting, in any manner, directly or by implication:

1. The degree of risk associated with any peel procedure or any other health care service;
2. The level of pain or discomfort associated with any peel procedure or any other health care service;
3. The recovery period required for any peel procedure or any other health care service;
4. The results that can be achieved with any peel procedure or any other health care service;
5. Approval or endorsement of any peel procedure or any other health care service by any entity.

D. Misrepresenting, in any manner, directly or by implication, the likely condition of the typical patient's skin within any specified period following any peel procedure.

E. Making any representation, directly or by implication, relating to the risks or benefits of any peel procedure unless respondents clearly and prominently disclose in close proximity to such representation that the peel procedure is a chemical face peel.

F. Misrepresenting, in any manner, directly or by implication, any material fact relating to any peel procedure or any other health care service, or the results thereof.

G. Disseminating to any provider of health care services any material containing any representation prohibited by any of the above provisions I.A.-F. of this order.

II.

It is further ordered, That for the purpose of determining and securing compliance with this order, respondents MMS, or its successors and assigns, and Walerstein shall:

A. Within thirty (30) days following the date of entry of this order, distribute a copy of this order to all of respondents' present officers, agents, representatives, independent contractors and employees having responsibilities with respect to the subject matter of this order; and for a period of five (5) years from the date of entry of this order, distribute a copy of same to all of respondents' future officers, agents, representatives, independent contractors and employees having said responsibilities.

B. For a period of five (5) years from the date of entry of this order, maintain and, within ten (10) days of a written request, make available to duly authorized representatives of the Commission for inspection and copying, complete records relative to the manner and form of respondents' compliance with the above terms and provisions of this order, including copies of each different material in which any representation subject to part I of this order is made.

C. For a period of ten (10) years from the date of entry of this order, notify the Commission in writing at least thirty (30) days prior to any discontinuance of respondent Walerstein's affiliation with the corporate respondent and inform the Commission in writing within 30 days of any affiliation of respondent Walerstein with a new business or employment which involves the advertising, promotion, offering for sale or sale of any peel procedure or any other health care service, the advertising, promotion, offering for sale or sale of training in performing any peel procedure or any other health care service or the advertising, promotion, offering for sale or sale of any service in marketing any peel procedure or any other health care

service, each such notice to include the respondent Walerstein's new business address and a statement of the nature of the business or employment with which the respondent is newly affiliated, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

D. Within ten (10) days after issuance of this order, designate an agent authorized to accept correspondence and service of process from the Federal Trade Commission on behalf of respondent Walerstein, notify the Commission of the name and address of such agent, and cause said agent to notify the Commission in writing within ten (10) days of his or her acceptance of such designation, and, for a period of ten (10) years from the date of issuance of this order, at all times maintain such a designated agent, notify the Federal Trade Commission of any change in the name or address of such designated agent within 10 days of such change, and cause each such designated agent to notify the Commission in writing within ten days of his or her acceptance of such designation.

E. Notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporate respondent that may affect compliance obligations arising out of this order.

F. Within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which respondents have complied with this order.

IN THE MATTER OF

SOUTHEAST COLORADO PHARMACAL ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3410. Complaint, Jan. 15, 1993--Decision, Jan. 15, 1993

This consent order prohibits, among other things, a Colorado-based association of pharmacies, that dispense prescriptions which are paid for by third-party payers according to predetermined formulas, from entering into or threatening to enter into any agreement with pharmacies to withdraw or to refuse to participate in these kinds of reimbursement programs in the future.

Appearances

For the Commission: *Claude W. Wild, III* and *Jeffery Dahnke*.

For the respondent: *John Geddes*, President, La Junta, CO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by the Act, the Federal Trade Commission, having reason to believe that the Southeast Colorado Pharmacal Association, hereinafter sometimes referred to as respondent, has violated the provisions of the Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

RESPONDENT

PARAGRAPH 1. Respondent Southeast Colorado Pharmacal Association ("SCPhA") is an unincorporated association of pharmacies doing business in the State of Colorado, with its office and principal place of business located at 15 W. 22nd Avenue, La Junta, Colorado.