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 of the State of California  
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 Deputy Attorney General  
 3 50 Fremont Street, Suite 300  
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 4 Telephone: (415) 356-6375  
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 5 Attorneys for Complainant

7 BEFORE THE BOARD OF DENTAL EXAMINERS  
 DEPARTMENT OF CONSUMER AFFAIRS  
 8 STATE OF CALIFORNIA

9 In The Matter Of The Accusation  
 10 Against:

No. AGN 1994-72

11 MICHAEL MARCUS, D.D.S.  
 12 125 North Jackson Avenue, Suite 205  
 San Jose, California 95116  
 13 Certificate No. 31037

STIPULATION IN  
 SETTLEMENT AND DECISION

14 Respondent.

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 16 Georgetta Coleman, Executive Officer of the Board of Dental Examiners,  
 17 Department of Consumer Affairs of the State of California, by and through her attorney,  
 18 Daniel E. Lungren, Attorney General of the State of California, by Hannah Wiss Hirsch,  
 19 Deputy Attorney General, and Michael Marcus, D.D.S. (hereinafter "respondent"), by and  
 20 through his attorney Timothy D. Murphy of the Law Offices of James Jay Seltzer, hereby  
 21 stipulate as follows:

22 1. Respondent was duly served with a copy of the Accusation, Statement  
 23 to Respondent, Request for Discovery, Form Notice of Defense and copies of Government  
 24 Code Sections 11507.5, 11507.6 and 11507.7 as required by sections 11503 and 11505, and  
 25 respondent timely filed a Notice of Defense.

26 2. Respondent has received and read the Accusation which is presently on  
 27 file as Case No. AGN 1994-72 before the Board and is attached hereto as Exhibit A.



1 on probation for a period of five (5) years on the following terms and conditions:

2 1. Respondent shall comply with all conditions of probation and obey  
3 federal, state and local laws and all rules and regulations governing the practice of dentistry  
4 in California.

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

8 3. Respondent shall comply with the Board's probation surveillance  
9 program.

10 4. Respondent shall appear in person for interviews with a Board  
11 representative upon request at various intervals and with reasonable notice.

12 5. Respondent shall inform the Board in writing within 15 days of any  
13 change of place of practice or place of residence.

14 6. In the event respondent should leave California to reside or practice  
15 outside the State, respondent must provide written certification to the Board of the dates of  
16 departure and return. Periods of residence or practice outside of California will not apply to  
17 the reduction of the probationary period. In the event respondent would cease to actively  
18 practice dentistry in California, respondent must provide written notification of that fact to  
19 the Board. The period when the respondent is not practicing will not apply to the reduction  
20 of the probationary period.

21 7. Commencing from the effective date of this decision, or on December  
22 15, 1996, whichever date is later, respondent shall be suspended from the practice of  
23 dentistry for a period 30 days. Respondent shall not mislead patients regarding the reasons  
24 for suspension from practicing dentistry. During the suspension respondent shall not practice  
25 dentistry directly or indirectly, including the supervision of dental auxiliaries, nor shall  
26 respondent receive or have set aside for future receipt, any new monies derived from the  
27 practice of dentistry as defined by the provisions of Business and Professions Code section

1 1625, which includes managing or conducting as manager, proprietor, conductor, lessor, or  
2 otherwise, a place where dental operations are performed.

3 If respondent operates his or her own office as a solo practice or as a one  
4 person professional corporation, said office is to be closed except for administrative purposes  
5 (making future appointments when suspension is over, opening mail, referring patients,  
6 accepting payments on accounts, and general office administration); and respondent shall not  
7 lease the dental office nor make any monetary gain from the practice earned during the  
8 period of time that the office is closed.

9 8. Respondent shall not treat female patients without the presence of  
10 another party. Within 30 days from the effective date of this decision, respondent shall  
11 submit to the Board, for prior approval, a plan to implement this restriction. Respondent  
12 shall submit proof satisfactory to the Board of compliance with this term of probation.  
13 Respondent understands that he may be required to have a member of his staff acknowledge  
14 and sign an acknowledgment of this condition.

15 9. Respondent agrees to pay the Board's actual and reasonable costs of  
16 investigation and enforcement of this matter in the amount of \$3,831.00. Said amount shall  
17 be paid within the first three years of probation in a payment plan approved by the Board.  
18 Probation shall not terminate until full payment has been made. Respondent's license shall  
19 not be renewed until the cost recovery has been paid in full or respondent is otherwise in  
20 compliance with a payment plan approved by the Board.

21 10. Within 60 days of the effective date of this decision, respondent shall  
22 undergo a psychological evaluation by a licensed psychologist and/or psychiatrist appointed  
23 by the Board. Such evaluator shall furnish a written report to the Board or its designee  
24 regarding respondent's judgment and ability to independently and safely practice dentistry  
25 and such other information as the Board may require. The cost of such evaluation shall be  
26 borne by respondent. Respondent shall execute a Release of Information form authorizing  
27 the evaluator to release all information to the Board. Respondent shall comply with the

1 recommendations of the evaluator. This evaluation shall be treated as confidential by the  
2 Board and is not subject to discovery, except by respondent.

3           11. Within 60 days of a determination that psychotherapy is required,  
4 respondent shall submit a proposed therapist and plan of therapy to be approved by the  
5 Board. The cost of therapy shall be borne by respondent. The plan of therapy shall include  
6 the nature of the treatment and its proposed duration. The psychotherapist shall agree to  
7 submit quarterly reports to the Board regarding the progress and participation of respondent.  
8 The treatment program shall not be terminated except upon the Board approval after  
9 submission of the results of the program by the psychotherapist.

10           12. If respondent violates the terms of this probation in any respect, the  
11 Board, after giving respondent notice and the opportunity to be heard, may set aside the stay  
12 order and impose the revocation of the respondent's license. If, during the period of  
13 probation, an accusation and/or a petition to revoke probation has been filed against  
14 respondent's license or the Attorney General's Office has been requested to prepare an  
15 accusation and/or a petition to revoke probation against respondent's license, the probation  
16 period shall automatically be extended and shall not expire until the accusation and/or the  
17 petition to revoke probation has been acted upon by the Board. Upon successful completion  
18 of probation, respondent's license will be fully restored.

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13. This stipulation shall be subject to the acceptance of the Board of Dental Examiners. If the Board fails to accept this stipulation, it shall be of no force or effect for either party, and the matter will be regularly set for hearing.

Dated: \_\_\_\_\_

DANIEL E. LUNGREN, Attorney General  
of the State of California

HANNAH WISS HIRSCH  
Deputy Attorney General

Attorneys for Complainant

Dated: 9-26-96

Timothy D. Murphy  
TIMOTHY D. MURPHY, Esq.  
Law Offices of James Jay Seltzer  
Attorneys for Respondent

I hereby certify that I have read this Stipulation and agreement in its entirety, that I fully understood the legal significance and consequence thereof, and agree to, said Stipulation and Waiver and in witness thereof I affix my signature.

Dated: 10/11/96

Michael Marcus  
MICHAEL MARCUS, D.D.S.  
Respondent

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**DECISION AND ORDER**

The above stipulation has been adopted and shall become the Decision of the Board of Dental Examiners of the State of California effective 9 December 1996.

**IT IS SO ORDERED** this 7th day of November, 1996.

  
BOARD OF DENTAL EXAMINERS

*Binder*

1 DANIEL E. LUNGREN, Attorney General  
 of the State of California  
 2 HANNAH WISS HIRSCH  
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 8 **STATE OF CALIFORNIA**

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 Against:

No. AGN 1994-72

11 MICHAEL MARCUS, D.D.S.  
 12 125 North Jackson Avenue, Suite 205  
 San Jose, California 95116  
 13 Certificate No. 31037

ACCUSATION

*Dec 6-7-95*

14 Respondent.

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 16 Complainant, Georgetta Coleman, charges and alleges as follows:

17 1. She is the Executive Officer of the Board of Dental Examiners,  
 18 Department of Consumer Affairs, State of California, (hereinafter "the Board") and  
 19 makes and files this Accusation solely in her official capacity.

20 2. Respondent Michael Marcus (hereinafter "Respondent") was issued  
 21 certificate number 31037 by the Board in 1983. Said certificate is active and will expire  
 22 on March 31, 1996. No formal disciplinary action has been taken against this license.

23 **RELEVANT STATUTES AND REGULATIONS**

24 3. Section 1670 of the Business and Professions Code provides, in  
 25 pertinent part, that any licentiate may have his license revoked, suspended, or be  
 26 reprimanded or be placed on probation by the Board for unprofessional conduct in his  
 27 or her profession.



1 Respondent did the following:

2 On or about December 1992 Respondent undertook to care for and treat  
3 patient T.N. in his dental practice. On or about January 13, 1993 or January 16, 1993,  
4 in caring for and treating said patient for a root canal, Respondent rubbed and fondled  
5 T.N.'s right breast through her clothing while his dental assistant was out of the  
6 treatment room.

7 **THIRD CAUSE FOR DISCIPLINARY ACTION**

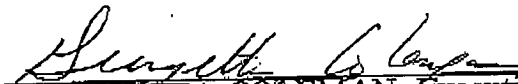
8 9. Respondent is subject to disciplinary action pursuant to Business  
9 and Professions Code sections 1670, 1680(e) and 726 for unprofessional conduct in that

10 Respondent did the following:

11 On or about January 14, 1993 Respondent undertook to care for and  
12 treat patient C.V. for a wisdom tooth extraction. In the course of said procedure,  
13 Respondent rubbed and fondled said patient's right breast two (2) times through her  
14 clothing while his dental assistant was out of the treatment room.

15 **WHEREFORE**, complainant prays that the Board hold a hearing on the  
16 matters alleged herein and following said hearing issue a decision revoking or  
17 suspending Dentist Certificate No. 31037, issued to Michael Marcus, D.D.S., ordering  
18 Michael Marcus to pay the Board its costs and charges for investigation and  
19 enforcement of this case according to proof at the hearing and taking such other and  
20 further action as may be deemed appropriate.

21  
22 DATED: 6-7-98

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25 GEORGETTA COLEMAN, Executive Officer  
26 Board of Dental Examiners  
27 State of California

Complainant

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