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At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the courthouse at 60 Centre Street, Borough of Manhattan, City and State of New York on the 22nd day of July 1985.

PRESENT: Hon. Thomas J. Hughes Justice.

-----X THE PEOPLE OF THE STATE OF NEW YORK, by ROBERT ABRAMS Attorney General of the State of New York, : Petitioners, : - against - : GARY V. PACE : Respondent. : Pursuant to Section 63, subdivision 12 of the Executive Law, and Article 22-A of the General Business Law : -----X

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER : Index No. : 42131/85

Upon reading and filing the annexed verified petition and affirmation with exhibits of Leslie E. Rossen, Assistant Attorney General in charge of the investigation, sworn to the 22nd day of July, 1985 and upon motion of Robert Abrams Attorney General of the State of New York for petitioners The People of the State of New York (Peter Bienstock, Stephen Mindell and Leslie E. Rossen, Assistant Attorneys General, of Counsel), it is hereby ordered that respondent in this proceeding show cause at Special Term, Part I of the Supreme Court, New York County, at the Courthouse hereof located at 60 Centre Street, City, County

and State of New York, on the 30th day of July, 1985, at 9:30 in the forenoon of that day or as soon thereafter as counsel may be heard why an order should not be made pursuant to Executive Law, Section 63, subdivision 12, and General Business Law Article 22-A, enjoining respondent from engaging in the illegal and fraudulent activities set forth in the annexed petition.

AND IT BEING FURTHER SHOWN by the verified petition and affirmation of Assistant Attorney General Leslie E. Rossen that respondent has engaged in repeated fraudulent and illegal acts and practices which have caused and threaten continued immediate and irreparable injury to the consuming public of the State of New York represented by the Attorney General;

AND IT APPEARING therefrom that immediate and irreparable injury, loss and damages will result unless respondent is restrained from disposing of assets before a hearing can be had;

AND IT FURTHER APPEARING that a cause of action for temporary relief exists under CPLR §§6301 and 6313, it is

ORDERED that, pending hearing on this petition, respondent Gary V. Pace be and is hereby restrained pursuant to CPLR §6301 and 6313 from:

1. Engaging in the unlicensed practice of medicine and performing physical examinations;

- TJH
2. Appending the initials "Ph.D." to his name or from using the appellation "Dr." in the course of business or other dealings with members of the public;
 3. Withdrawing, transferring or otherwise disposing of any property or funds derived from the furnishing of nutrition counseling or other related services to consumers except on further order of the court; and it is further

TJH

ORDERED that upon service of a copy of this order upon any bank which holds funds in the name of or to the credit of respondent said bank is hereby temporarily restrained pending the hearing on this motion from paying out, transferring, honoring drafts or checks against or setting off or assigning to themselves or to any other person or firm any such funds.

SUFFICIENT CAUSE to me appearing therefore

LET service of a copy of this order and supporting papers upon respondent on or before the 25th day of July, 1985, be deemed and sufficient service hereof.

ENTER

Thomas J. Hughes
J. S. C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
The People of the State of New York, by:
ROBERT ABRAMS, Attorney General of the
State of New York,

Petitioners,

-against-

GARY V. PACE,

Respondent.

Pursuant to Section 63, Subdivision 12
of the Executive Law, and General
Business Law Article 22-A.

:
: VERIFIED PETITION
: Index No.

-----X
TO: SUPREME COURT OF THE STATE OF NEW YORK

The People of the State of New York, by their
attorney, Robert Abrams, Attorney General of the State of
New York, respectfully allege upon information and belief,
that:

PARTIES AND JURISDICTION

1. Petitioners are the People of the State of
New York, by their attorney, Robert Abrams, Attorney General
of the State of New York. This Court has jurisdiction
pursuant to (a) New York Executive Law Section 63(12), under
which the Attorney General is empowered to seek injunctive
relief, restitution, damages, and costs when any person has
engaged in repeated fraudulent or illegal acts or otherwise
engaged in persistent fraud or illegality in the conduct of
business, and (b) General Business Law Article 22-A
authorizing petitioners to seek injunctive relief, costs and

penalties for false advertising and deceptive acts and practices.

2. Respondent Gary Pace ("Pace") resides and presently conducts business at 11 Terrace Park, Garden City, New York 11530. At least since 1981 and continuing to date, he has engaged in the private practice of nutritional consulting.

3. Pre-litigation notice was timely served pursuant to General Business Law ("GBL") Article 22-A.

SUMMARY OF THE SCHEME AND CAUSES OF ACTION

4. As more particularly described below, Pace has engaged in a scheme to defraud consumers by repeated fraudulent and illegal acts and practices including the illegal practice of medicine and fraudulent misrepresentations. By virtue of this scheme, Pace has induced hundreds of consumers each to pay hundreds of dollars to him for improper physical examinations, worthless laboratory tests, bogus nutritional advice, and unnecessary vitamin, mineral, and herbal supplements.

FACTS

5. Pace advertises in the Nassau County Yellow Pages and the Pennysaver as a highly credentialed nutritional consultant holding a Ph.D. degree. He represents that he offers counseling for a variety of physical conditions including ulcers, hypertension, diabetes, insomnia and hypoglycemia.

6. Induced by such advertisement, consumers contact Pace and seek consultation and treatment for a variety of the advertised physical ailments and others including, but not limited to, colitis, arthritis, allergies, endometreosis (a disorder of the lining of the uterus), diabetes, fatigue, tumors, weight loss, high blood pressure, eating disorders such as anorexia nervosa and bulimia, and bronchial infections.

7. In most instances, consumers contact Pace by telephone. Typically, Pace's receptionist/assistant discusses the individual's problems and arranges an appointment with "Dr." Pace. The consumer is quoted a fee ranging from \$260 - \$360 for three visits including certain diagnostic tests.

8. Upon arrival at Pace's office, the consumer is greeted by a receptionist/assistant who requests that a variety of detailed personal questionnaires be completed by the consumer. These questionnaires usually include "Dr." Donsbach's "Nutrient Deficiency Test" and a "Metabolism Classification Questionnaire." The receptionist/assistant then informs the consumer that samples of hair and saliva are necessary for laboratory analysis, and takes such samples.

9. The consumer is then introduced to "Dr." Pace. Pace wears a white laboratory coat and ushers the consumer into his office for consultation. He takes the consumer's medical history and reviews the completed

"Metabolism Classification" and "Nutrient Deficiency" questionnaires.

10. In some instances, after taking a medical history, Pace physically examines the consumer. His physical examination includes measuring blood pressure, and monitoring the heart, lungs, stomach, or other internal organs with a stethoscope.

11. With respect to certain female consumers, Pace also performs breast and vaginal examinations, allegedly to uncover the existence of cysts.

12. Pace then typically advises the consumer that his/her ailments can be treated and cured by him through the use of vitamin, mineral and herbal supplements to be selected and prescribed by him based on the results of laboratory tests, known as hair analysis and herbal crystallization analysis, as well as computer analyses of the personal questionnaires. Pace typically informs the consumer that such results will be available within two weeks of the initial visit. Consumers are directed by Pace to return for additional consultations after he receives the results of the tests.

13. At subsequent consultations, Pace reviews the test results with the consumer, together with his clinical conclusions and prescribes certain vitamins, minerals and/or herbal supplements to treat the consumer's condition. Pace maintains a stock of some of these vitamins, minerals and herbal supplements, and frequently sells them to consumers.

14. From 1981 to date, Pace has consulted with no fewer than 251 consumers and has collected an average of \$317.00 in fees from each.

15. Through the use of the practices described above, Pace purports to diagnose, treat and prescribe remedies for a variety of physical conditions, diseases, pains, and injuries.

CAUSES OF ACTION

I ILLEGAL PRACTICE OF MEDICINE

16. Pace is not licensed or otherwise authorized to practice medicine in New York State.

17. Education Law §6522 provides that only a person licensed or otherwise authorized shall be permitted to practice medicine.

18. Pursuant to Education Law §6512, it is illegal to practice, offer to practice, or hold oneself out as being able to practice medicine if one is not licensed or authorized to do so by the New York State Department of Education.

19. Pursuant to Education Law §6521, the practice of medicine includes diagnosing, treating, or prescribing for any human disease, pain, injury, deformity or physical condition.

20. By holding himself out as able to diagnose, treat and prescribe for various physical conditions, diseases, pains, and injuries and by undertaking to

diagnose, treat and prescribe for the various physical conditions, diseases, pains and injuries, Pace has repeatedly and persistently engaged in, and continues to engage in, the unlicensed practice of medicine, in violation of Education Law §6512 and §6522.

21. By conducting physical examinations for the purpose of diagnosing, treating or prescribing for physical ailments, Pace has further repeatedly and persistently engaged in, and continues to engage in, the unlicensed practice of medicine in violation of Education Law §6512 and §6522.

22. By reason of such conduct, respondent is engaging in repeated and persistent illegal conduct in violation of Executive Law §63(12).

II MISREPRESENTATIONS

23. Pace has made and is now making numerous statements, representations and promises to induce consumers to purchase his services. By and through the use of such statements, representations, and promises, Pace has represented and promised and is now representing and promising, directly or by implication that:

- (a) He is capable of diagnosing, treating or prescribing remedies for various physical conditions, diseases, pains, and injuries.
- (b) His physical examinations and clinical observations furnish a reasonable scientific basis for diagnosing, treating or prescribing for various physical conditions, diseases, pains and injuries.

- (c) The laboratory tests (including hair analysis and herbal crystallization analysis) furnish a reasonable scientific basis for determining nutrient excesses or deficiencies in consumers' bodies or for diagnosing, treating or prescribing dietary supplements for various physical conditions, diseases, pains, and injuries.
- (d) The questionnaires he administers (Dr. Donsbach's "Nutrient Deficiency Survey" and the "Metabolism Classification Test") furnish a reasonable scientific basis for diagnostic conclusions and treatment advice for physical conditions.
- (e) Pace is qualified to provide, and does provide, scientific nutritional advice with respect to the treatment of various physical conditions, diseases, pains and injuries.

24. Such representations are false, deceptive or misleading. In truth and in fact:

- (a) Pace is not licensed to practice medicine and has no legitimate credentials to enable him to diagnose, treat or prescribe for various physical conditions, diseases, pains, or injuries.
- (b) The physical examinations and clinical observations do not furnish a reasonable scientific basis for diagnosing, treating or prescribing for various physical conditions, diseases, pains or injuries.
- (c) The laboratory tests do not furnish a reasonable scientific basis for diagnosing, treating or prescribing for various physical conditions, diseases, pains, or injuries. Specifically,
 - (1) Hair analysis is not recognized by New York State as a legitimate clinical means of assessment of nutritional or general health status.

(2) Herbal crystallization testing is not recognized by New York State as a legitimate clinical test.

(d) Neither Dr. Donsbach's Nutrient Deficiency Test nor the Metabolism Classification Questionnaire provide a reasonable scientific basis for drawing conclusions about an individual's nutritional excesses or deficiencies, or for prescribing vitamin, mineral or other dietary supplements.

(e) Pace does not hold a degree in nutrition from a duly authorized degree-granting institution. Further, Pace knows or should know that the techniques applied and advice given by him are not accepted in the scientific community as providing a reasonable basis for diagnosing and treating physical conditions, diseases, pains or injuries.

25. Consumers have relied, and are relying on these misstatements, misrepresentations and false promises to their detriment, and have paid Pace substantial amounts for his services, and a variety of useless vitamins, minerals, herbs and other dietary supplements.

26. By reason of the foregoing, Pace is repeatedly and persistently engaging in deception and misrepresentation in the transaction of his business in violation of Executive Law §63(12) and GBL §349.

III CONCEALMENT OF MATERIAL FACTS

27. Pace fails to disclose the material fact to each consumer who consults him that every consumer who consults him will be found by Pace to have an alleged nutrient excess or deficiency, whether or not such is the fact, and will be advised that such consumer's physical

condition, disease, pain, or injury can be treated successfully by Pace by the use of vitamins, herbs, minerals or other dietary supplements.

28. Pace fails to disclose the material fact to each consumer who consults him that the physical exams performed and the tests and questionnaires used are no more than a sham designed to lend credence to Pace's pre-determined diagnosis that the consumer has an alleged nutrient excess or deficiency and that his/her physical condition, disease, pain, or injury can be treated successfully by means of vitamins, herbs, minerals or other dietary supplements.

29. Further, Pace's failure to disclose the aforesaid material facts leads consumers to rely upon Pace's advice and treatment and pay him for such services when they would not otherwise do so.

30. Pace fails to disclose the material fact to consumers, and specifically to female consumers upon whom he performs physical examinations, that he is not qualified to perform such examinations and that such examinations serve no legitimate purpose.

31. Pace's failure to disclose the material facts stated in paragraph 30 leads consumers to consent to the performance of physical examinations by Pace to which they would not otherwise consent.

32. Pace's concealment of material facts, as described, constitutes repeated and persistent fraudulent

and deceptive business practices in violation of Executive Law §63(12) and GBL §349.

IV ILLEGAL USE OF EDUCATIONAL CREDENTIALS

33. Pursuant to Education Law §224 it is illegal to append degree letters, including "Ph.D.", to one's name unless the degree is received from a duly authorized institution.

34. Pace appends to his name the degree letters Ph.D. in advertisements, correspondence, promotional materials, insurance forms and elsewhere and refers to himself as "Dr." Pace in the course of his dealing with the public.

35. Pace received a correspondence Ph.D. from Donsbach University of Huntington Beach, California.

36. In order to qualify as a duly authorized institution within the meaning of the Education Law, an institution must be accredited by at least one accrediting commission recognized by the United States Commissioner of Education, or its degree program must be registered with the New York State Department of Education.

37. Donsbach University is not accredited by an accrediting commission recognized by the United States Commissioner of Education and its degree programs are not registered with the New York State Department of Education. It is therefore not a duly authorized institution within the meaning of Education Law §224(3).

38. Consequently, Pace is repeatedly and persistently violating Education Law §224 by appending the degree letters "Ph.D." to his name and by using the appellation "Dr." in the course of his business.

39. By reason of the foregoing, Pace is engaging in repeated and persistent illegal conduct in violation of Executive Law §63(12).

V FALSE ADVERTISEMENT AND MISLEADING STATEMENTS

40. Pace has made and is now making the following misrepresentations and false promises in his advertisements to induce consumers to purchase his services, and others of similar import and meaning but not expressly set out herein:

a. Pace's Nassau County Yellow Pages advertisement leads off with the following description of his credentials in bold type:

NUTRITIONAL CONSULTANT GARY PACE Ph.D

Implied in this statement is the claim that Pace holds a Ph.D. in nutrition from an accredited university.

b. In the same advertisement he describes his services as

Nutritional counseling on holistic approach to health for - eight problems, diabetes, hypertenstion, hypoglycen [sic], natal care, hyperactive children, ulcers & other related conditions

The advertisement implies that Gary Pace is qualified to diagnose, treat or prescribe for the medical conditions described as well as others.

c. Pace also advertises that he can:

DETERMINE YOUR BODY'S TRUE VITAMINS, MINERALS,
ENZYMES & GLANDULAR NEEDS FROM SUCH TESTS AS:

- o HAIR & DIET ANALYSIS o NUTRIENT DEFICIENCY
- o HERBAL SALIVA o METABOLISM
- o COMPUTERIZED URINE & VASCULAR ANALYZERS

These statements imply that the tests Pace administers provide a reasonable scientific basis for determining the body's true vitamin, mineral, enzyme and glandular needs.

41. Such statements are false, deceptive or misleading. In truth and in fact:

a. Pace does not hold a Ph.D. in nutrition from an accredited institution;

b. Pace is not qualified to diagnose, treat or prescribe for any physical ailments, including diabetes, hypertension, hypoglycemia and ulcers; and

c. The tests Pace administers do not provide a reasonable scientific basis for determining a body's true vitamin, mineral, enzyme or glandular needs.

42. Respondent's false and misleading statements in his advertisements constitute repeated and persistent violations of General Business Law Article 22-A (§350) which makes illegal false advertising.

43. Respondent's repeated and persistent violations of GBL §350 constitute conduct in violation of Executive Law Section 63(12).

WHEREFORE, petitioner requests that the Court grant relief against respondent Gary Pace pursuant to

Executive Law §63(12) and GBL §§349 and 350 and issue an Order:

1. Permanently enjoining and restraining respondent from engaging in the fraudulent and illegal practices alleged herein;

2. Permanently enjoining respondent from engaging in the unlicensed practice of medicine;

3. Permanently enjoining respondent from appending the initials "Ph.D." to his name or from using the appellation "Dr." in the course of business or other dealings with members of the public;

4. Enjoining respondent from further engaging in the business of nutrition advice and counseling unless and until he files with the Secretary of State a bond in the amount of \$250,000.00 written by a company recognized and approved by the Superintendent of Insurance and approved by the Secretary of State with respect to its form, manner of execution and sufficiency.

5. Directing respondent to pay the Attorney General sufficient monies as determined by the Court to provide restitution and damages to aggrieved consumers who have consulted respondent for diagnosis and/or treatment of any physical condition, disease, pain, injury or deformity;

6. Directing respondent to render an accounting to petitioners, including full documentation of all services rendered and fees charged to any consumer who consulted respondent for diagnosis and/or treatment;

7. Awarding petitioners costs in this proceeding of \$2,000.00 pursuant to CPLR §§8303(a)(6);

8. Directing respondent to pay penalties pursuant to General Business Law Article 22-A;

9. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, N.Y.
July 22, 1985

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for the Petitioners
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3343

BUREAU OF CONSUMER FRAUDS
AND PROTECTION

PETER BIENSTOCK
STEPHEN MINDELL
LESLIE E. ROSSEN
Assistant Attorneys General
Of Counsel

VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

LESLIE E. ROSSEN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Robert Abrams, Attorney General of the State of New York, and am duly authorized to make this verification.

2. I have read the Petition and know its contents. They are true to my own knowledge. As to matters stated to be alleged on information and belief, I believe those matters to be true. The grounds of my belief as to all matters stated upon information and belief are set forth in the attached affirmation and include consumer complaints and investigatory materials contained in the files of the Bureau of Consumer Frauds and Protection.



LESLIE E. ROSSEN

Sworn to before me this
22nd day of July, 1985


Assistant Attorney General

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
The People of the State of New York, by
ROBERT ABRAMS, Attorney General of the
State of New York,

Petitioners,

AFFIRMATION

-against-

Index No.

GARY V. PACE,

Respondent.

Pursuant to Section 63, Subdivision 12
of the Executive Law and Article 22-A of the
General Business Law

-----x
LESLIE E. ROSSEN, an attorney duly admitted to
practice in the courts of the State of New York, affirms the
truth of the following under the penalties of perjury.

1. I am an Assistant Attorney General in the
Office of Robert Abrams, Attorney General of the State of
New York, assigned to the Bureau of Consumer Frauds and
Protection. I make this affirmation in support of the Order
to Show Cause and the Verified Petition and relief requested
therein. It is based upon personal knowledge to the extent
specifically set forth below; all other matters are based
upon documentary evidence and consumer complaints and are
believed to be true and correct.

2. No prior request has been made for the relief
sought herein.

3. Respondent Gary V. Pace is engaged in a scheme
to defraud consumers by repeated and persistent fraudulent
and illegal practices including the illegal practice of

medicine, fraudulent representations and failure to disclose material facts. He has induced hundreds of consumers each to pay hundreds of dollars for improper physical examinations, worthless laboratory tests, bogus nutritional advice, and unnecessary vitamin, mineral and herbal supplements.

4. The Attorney General instituted this proceeding after having reviewed a file on Pace developed by the State Education Department, Office of Professional Discipline. That department conducted an investigation of Pace's activities in response to a complaint received from the mother of one of Pace's consumers, Cynthia Makas. See complaint of Maxine Makas regarding her daughter, Cynthia Makas, annexed as Exhibit 1. This case was subsequently referred to this office for further action.

I ILLEGAL PRACTICE OF MEDICINE

A. Credentials

5. Pace's scheme relies on his ability, in the first instance, to convince potential consumers that he is well-credentialed and an expert in nutrition and the diagnosis and treatment of nutrition-related ailments.

6. In response to a subpoena issued to Pace, this office received materials used to substantiate Pace's claim that he is a well-credentialed expert in nutrition. The materials included his resume and copies of diplomas and certificates from various institutions and organizations.

7. In his resume and in advertisements, Pace represents that he obtained a M.S. degree (Master of Science) in 1964. See Pace's resume (Nutritional Background) and Nassau County Yellow Pages ad, 1981, annexed as Exhibit 2. In conversations with this office, Pace admitted that he earned no such degree.

8. Pace advertises that he has a Ph.D. in nutritional consulting. See Nassau County Yellow Pages ads 1982, 1983, 1984 and 1985 and Roslyn-Albertson and Mineola Pennysaver ads annexed as Exhibit 3. Pace introduces himself to consumers as "Doctor", and Pace's receptionist (usually his wife, Annette) and staff refer to him as "Doctor".

A woman answered the phone stating 'Doctor's office'. Affidavit of Peter Gallagher, Exhibit 22, ¶4. See also, Exhibit 19, ¶5; Exhibit 14, ¶3; Exhibit 13, ¶5.

When all of these were completed the receptionist told me to have a seat the 'doctor' would be with me shortly. Affidavit of Gina LaVecchia, Exhibit 16, ¶9. See also, Exhibit 13, ¶10.

The receptionist said the 'doctor' would be able to provide such a diet. Affidavit of Dan Nigro, Exhibit 19, ¶5.

A man came out of the office and introduced himself to me as Dr. Pace. Affidavit of Cynthia Makas, Exhibit 14, ¶8. See also, Exhibit 13, ¶11.

9. Pace received his Ph.D. from Donsbach University School of Nutrition in Huntington Beach, California, an unaccredited correspondence school. See copy of his diploma from Donsbach University annexed as

Exhibit 4.

10. While Donsbach University is authorized to grant degrees under California law, the degrees granted by Donsbach are not recognized in New York State. New York State rests its determination on the fact that the University is not accredited by an accrediting agency recognized by the United States Department of Education. See letters of Gerald W. Cross, Jr., Education Program Assistant, Division of Academic Review, New York State Education Department and Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, United States Department of Education annexed as Exhibit 5.

11. Furthermore, the California Board of Registered Nursing on March 20, 1984 withdrew provider approval of Donsbach University. It found, inter alia, that portions of the course material for the approved course, "Nutrition in Action" are "inaccurate, and not related to scientific knowledge required for the practice of nursing". See decision of the California Board of Registered Nursing annexed as Exhibit 6, ¶6. The California Board went on to describe specific inaccuracies in the course materials as well as misrepresentations made to the Board by Kurt Donsbach, the founder of the University, regarding his educational background.

12. Kurt Donsbach is also the head of a number of other nutrition education and research organizations whose services are used by Gary Pace. One of these is the

International Institute of Natural Health Sciences which sells computers, provides computer analysis of diets and publishes the Donsbach Nutrient Survey used by Pace in his practice. See excerpts from deposition of Kurt W. Donsbach, 1/28/85 annexed as Exhibit 7.

13. Pace also includes in his credentials a diploma from the School of Nutritional Science of the American Nutrition Consultants Association (ANCA). See ANCA diploma annexed as Exhibit 8. The curriculum for this school is based on materials prepared by Kurt Donsbach. See ANCA catalog annexed as Exhibit 9. Pace also advertises himself as a registrar in the parent organization ANCA. See ads in Exhibit 3.

14. Pace is also a member of the American Association of Nutrition and Dietary Consultants (AANDC) which is also known as the American Association of Nutrition Consultants (AANC). Despite its official sounding name, this organization requires few, if any, credentials in order to become a member. In fact, Dr. Victor Herbert, Chairman of the Department of Medicine at Hahnemann University in Philadelphia, Pennsylvania and a respected author on the subject of nutrition quackery, obtained a certificate of membership from this organization for his dog, Sassafras. The AANC has put its imprimatur on such questionable institutions and services as Donsbach University ("a fine education in nutrition"), Herbal Crystallization Analysis, and hair analysis. See Pace's AANC certificate, Sassafras's

certificate and articles describing Sassafras' membership, and AANC materials annexed as Exhibit 10.

15. Pace's credentials further include a certificate of participation in a workshop entitled "OB/GYN-A Team Approach for the 80's," sponsored by the American Physical Therapy Association. See Pace's APTA certificate annexed as Exhibit 11. The Continuing Education Units received by participation certify only attendance and not an "individual's competence or qualifications regarding the subject matter of the program." See statement of Francis J. Mallon, Esq., Associate Executive Director Professional Relations, American Physical Therapy Association annexed as Exhibit 12.

16. Because Donsbach University is not a duly authorized institution, Pace is in violation of New York Education Law §224 which provides that it is illegal to append degree letters to one's name unless the degree is received from a duly authorized institution recognized in New York.

17. Furthermore, these credentials do not qualify Pace to diagnose, treat or prescribe remedies for various physical conditions, diseases, pains, or injuries.

B. Diagnosing, Treating and Prescribing

18. Annexed hereto as Exhibits 13-27 are affidavits and letters from consumers describing their experience with Pace. Taken as a whole they clearly portray a scheme to defraud and deceive unwary consumers into

believing that Pace is a competent nutritionist qualified to diagnose, treat and prescribe for various ailments.

19. Potential consumers learn about Gary Pace in the Nassau County Yellow Pages and local Pennysavers, where he is listed as a nutritional consultant (See Exhibit 3). In some cases they are referred by proprietors of health food stores to whom Pace has provided a supply of business cards for distribution.

I first learned about Dr. Gary Pace from the Nassau County Yellow Pages. Affidavit of Phyllis Grala, Exhibit 27, ¶2; See also Exhibit 23, ¶3; Exhibit 17, ¶3; Exhibit 20, ¶2.

I was referred to Dr. Pace through the Vitamin Quota Health Food Store...The employees of the health food store directed me to Dr. Pace's business cards which were stocked near the cash register. Affidavit of Angela Cozzi, Exhibit 15, ¶3.

20. In a couple of advertisements in the Yellow Pages, Pace ran his ad under the section entitled "Dieticians." See Nassau County Yellow Pages ads, 1982, Exhibit 3 and 1981, Exhibit 2. According to his resume, Pace is not a registered dietician.

21. Pace advertises that he treats physical conditions including ulcers, hypertension, diabetes, insomnia and hypoglycemia. See advertisements in Exhibit 3.

22. Consumers contact Pace's office and typically speak to his assistant, briefly describing the problem for which they seek assistance. In some cases the caller leaves a message on an answering machine and is called back

directly by Pace. Exhibit 22, ¶4; Exhibit 15, ¶4; Exhibit 19, ¶5; Exhibit 14, ¶3; Exhibit 13, ¶5; Exhibit 17, ¶4.

23. Sometimes the consumer speaks directly to Pace during the initial call to his office. Pace listens to the problem and assuringly promises he can help provide relief. In one instance, he even diagnosed the problem over the phone.

Approximately one hour later I received a call from a man who identified himself as 'Dr. Pace'. Dr. Pace asked what my problem was. I told him I had a pain in my middle section directly under my breast bone before and after meals. I told Dr. Pace that sometimes nausea and vomiting accompanied this pain.

Dr. Pace diagnosed my problem as a duodenal ulcer. Affidavit of Saundra Maurina, Exhibit 26, ¶¶5, 6.

During my first telephone conversation with Dr. Pace, I explained that I had a history of allergies...Dr. Pace said he could help me by providing the proper diet with vitamin and herbal supplements. Affidavit of Gina LaVecchia, Exhibit 16, ¶¶4, 5.

I called the office and spoke directly with Dr. Pace. I explained to him that I suffered from frequent migraine headaches...He said that, based on the test results, he would recommend certain vitamins and herbs which should prevent further headaches. Affidavit of Janice Ferraro, Exhibit 21, ¶3. See also Exhibit 22, ¶¶4, 5.

24. When the caller speaks to the receptionist/assistant, the caller is advised to make an appointment to meet Dr. Pace and that Dr. Pace will be able to solve his/her problem. For example, one woman told the assistant she was suffering from bulimia:

I called the number listed in the ad and spoke to a woman, who later identified herself as Mrs. Pace. I asked her if the doctor had experience in dealing with bulimia victims. Mrs. Pace assured me that Dr. Pace had such experience. She said it was a good idea to see Dr. Pace and 'we will get you where you should be' and 'you will have to stop'. Affidavit of Melanie Mazor, Exhibit 17, ¶4.

25. Consumers contact Pace for treatment of a variety of problems including obesity, Exhibit 20, ¶2; heart pounding, tingling sensations, Exhibit 13, ¶2; bladder infections, severe constipation, Exhibit 14, ¶9; allergies, Exhibit 16, ¶4; chronic yeast infections, Exhibit 23, ¶2; and Exhibit 15, ¶11; migraine headaches, Exhibit 21, ¶2 and Exhibit 18, ¶2.

26. As a matter of routine, Pace requires two clinical specimens - a lock of hair for hair trace mineral analysis and saliva for an herbal crystallization saliva test. The purported purpose of these tests is to determine individual body vitamin and nutrient levels.

The receptionist then cut a sample of my hair for the hair analysis test and she had me hold out my tongue and place a saliva sample on a glass slide for the herbal saliva test. Affidavit of Cynthia Makas, Exhibit 14, ¶7.

Dr. Pace cut some of my hair for the hair analysis test. He had me hold out my tongue and place a saliva sample on a glass slide for the Herbal Saliva Test. Affidavit of Jenny Streek, Exhibit 23, ¶10.

She also cut a great deal of my hair and put it into two separate plastic bags. Mrs. Pace also took a saliva sample from me for the Herbal Saliva Test. Affidavit of Dan Nigro, Exhibit 19, ¶8.

See also Exhibit 22, ¶10; Exhibit 25, ¶¶15, 16; Exhibit 17, ¶8; Exhibit 18, ¶6.

27. The consumer is then told to fill out at least two questionnaires.

I was also given two questionnaires to fill out with many questions about how I feel when I eat certain types of meals, how I react to certain activities and many other questions. Affidavit of Carla Schafer, Exhibit 18, ¶7.

Mrs. Pace instructed me to complete a metabolism questionnaire and a Nutrient Deficiency questionnaire. Affidavit of Angela Cozzi, Exhibit 15, ¶10. See also Exhibit 19, ¶8; Exhibit 21, ¶6; Exhibit 17, ¶8.

28. Pace meets the consumer wearing a white lab coat. He sometimes has a stethoscope hanging around his neck.

Dr. Gary Pace walked in from his office wearing a white lab coat and a stethoscope. Affidavit of Melanie Mazor, Exhibit 17, ¶9. See also Exhibit 13, ¶11; Exhibit 15, ¶11; Exhibit 19, ¶9; Exhibit 21, ¶7; Exhibit 22, ¶11; Exhibit 25, ¶17; Exhibit 26, ¶22; Exhibit 24, ¶6; Exhibit 20, ¶4.

29. Pace consults with the consumer in his private office. Diplomas are displayed and bookshelves line the wall. The client and Pace discuss the consumer's medical history in his office where Pace records notes on a "Case Record" form. Exhibit 13, ¶11; Exhibit 14, ¶8; Exhibit 15, ¶11; Exhibit 16, ¶10; Exhibit 17, ¶¶9, 10; Exhibit 21, ¶7; Exhibit 22, ¶11; Exhibit 23, ¶8; Exhibit 25, ¶17.

30. This "Case Record" form is divided into several sections. Pace fills in a general medical history of

the client including, "History of Illness and Treatment," "Operations, Accidents or Injuries," "Present Illness and Complaints," "Diagnostic Summary" and "Treatment, Recommendations and Progress." Sample "Case Records" are annexed as Exhibit 29.

31. Some "Case Records" include diagrams made by Pace of a female body identifying the location of cysts. See samples of "Case Records" with diagrams annexed as Exhibit 30.

32. During the initial consultation, Pace reviews the completed questionnaires. Where responses are left blank, Pace occasionally fills them in without consulting the consumer. On occasion, Pace was observed changing a consumer's answers:

Dr. Pace and I then reviewed the questionnaires I had just completed. During this discussion I observed Dr. Pace changing several of my answers. Affidavit of Melanie Mazor, Exhibit 17, ¶11.

During our discussion, Dr. Pace was looking over the questionnaires I filled out. He said I could not leave any blanks and he proceeded to fill in all the blanks with his own answers. Affidavit of Dan Nigro, Exhibit 19, ¶10.

During this part of the consultation I observed Dr. Pace erasing some of my answers and filling in different answers on the questionnaire. Affidavit of Elizabeth Carr, Exhibit 25, ¶18.

33. On the basis of this initial consultation, Pace advises the consumer that his/her ailments can be cured and treated through the use of vitamin, mineral and herbal supplements which he will recommend based on the results of

a computer analysis of the questionnaires and the results of the hair and saliva sample tests.

I explained to Dr. Pace what symptoms I was suffering and he told me they were not emotional but physical and that he could cure me through vitamin and herbal supplements. Affidavit of Laura Landoe, Exhibit 13, ¶12.

Dr. Pace suggested I take some vitamins and roots to alleviate my run-down condition. Affidavit of Cynthia Makas, Exhibit 14, ¶11.

He told me that with the analyses of the tests he could provide the proper supplements to build up immunities to the things I was allergic to. Affidavit of Gina LaVecchia, Exhibit 16, ¶6.

34. Pace informs the consumer that the test results will be returned to him in approximately two weeks at which time the client should return for further consultation. Exhibit 13, ¶17; Exhibit 16, ¶16; Exhibit 19, ¶18; Exhibit 21, ¶9; Exhibit 23, ¶16; Exhibit 26, ¶27.

35. In some cases, after taking the medical history, Pace physically examines the consumer.

Dr. Pace also took my blood pressure. He said that he often does a complete check-up. I said no to a check-up but said that he could take my heart rate. Affidavit of Lynn Goldstein, Exhibit 20, ¶6.

Dr. Pace removed a stethoscope from a large box on the floor and placed it near the opening of my shirt and proceeded to open 3 buttons of my blouse...He then informed me that I had an irregular heartbeat. Affidavit of Sandra Maurina, Exhibit 26, ¶¶24, 25.

36. With respect to female consumers, in some cases Pace performs breast and vaginal examinations

allegedly to detect the existence of cysts. There is no clear pattern as to when Pace performs these exams, i.e., first or second visit. However, these exams are usually performed when no one else is in the office.

Dr. Pace then explained to me that he was going to examine my breasts for cysts. He asked me to take off my shirt.

Dr. Pace said he found 3 cysts... He also squeezed my nipples to 'check for discharge'...

While my shirt was off Dr. Pace asked me to take my pants off to check for vaginal cysts... During the examination Dr. Pace asked me 'whether I lifted weights, since I had a nice body.' Affidavit of Melanie Mazor, Exhibit 17, ¶¶13, 14, 15, 17, 19.

Dr. Pace then stated that something in the test results showed I was prone to cysts. Dr. Pace asked me if I gave myself breast examinations. I told him I did. He said let me show you how, just in case you are doing it wrong. He told me to take off my shirt, I did not, but I raised it and unhooked my bra. Dr. Pace then began grabbing and pulling my breasts. Believing he was a doctor and that something could be wrong, although I had been to my gynecologist the week before, I allowed Gary Pace to examine me...

Dr. Pace then asked me to step into another room. Although I knew I was alone with him, as the receptionist had gone, I believed he was a doctor and trusted him... In this room was a foot massage machine and a reclining chair. Dr. Pace asked me to remove my shoes, I did. He said if the arch of my foot was massaged I would have the desire to go to the bathroom and I would not be constipated again. He massaged my foot for a short time.

Dr. Pace then asked me to take off my underwear, I did. He gave me a hand towel to sit on. He then took his unwashed hand without a glove and inserted his middle finger in my vagina. He asked me several

times if he had located the Bartholin cyst. He continued poking at me until he found it. He removed his hand and said to me 'that I lubricate well.'

Dr. Pace gave me the impression that he was conducting this internal vaginal examination and breast exam to determine some course of treatment. Even though I was told by my gynecologist that Bartholin cysts are lubricating cysts that drain, I believed Dr. Pace, acting as a doctor, would be able to offer some advice concerning preventative measures. Affidavit of Cynthia Makas, Exhibit 14, ¶¶22, 23, 24, 25, 26, 27.

Dr. Pace went on to ask me if I gave myself breast examinations. I told him I always check myself, but I can't always be sure there are no problems. Dr. Pace said 'Let me examine your breasts.'...He physically examined my breasts and said everything was fine but I was probably prone to cysts.

Dr. Pace asked about my constant yeast infections and if I had any cysts in my uterus. I told him that I had a pap smear and check-up twice a year by my gynecologist. Dr. Pace then wanted to give me a vaginal exam. I told him I didn't think he should... Affidavit of Angela Cozzi, Exhibit 15, ¶¶13, 15, 16, 17.

...On the next visit on April 25, 1984 I received the results of those tests, and he confirmed that I was cystic. Under the pretext of a physical examination to look for cysts he examined and fondled my breasts and examined my inner thighs [sic]. He engaged me in conversation concerning my nipples and breast feeding intentions (I am unmarried). He then told me a vaginal examination was necessary. When he began to examine me without a glove or other sanitary precautions, I realized that I was being victimized, terminated the 'examination' and left. Consumer letter, dated April 28, 1984, Exhibit 28, ¶2.

37. Pace treated one female client with foot massage to "activate her ovaries" and said that he uses this

technique to remove cysts from his wife's body.

On my next visit, a few weeks later, I noticed there was no receptionist present. Gary Pace mentioned that his wife was upstairs. Dr. Pace ushered me into another room which had a reclining chair, two file cabinets, a foot stool, and charts of feet on the walls.

Dr. Pace explained that he was going to show me how to massage my feet to activate my ovaries...

Dr. Pace had me sit in the chair in the reclining position while he massaged my feet. Several times he told me to relax. He also asked many questions about cysts. Dr. Pace then massaged my feet with a vibrator that was the shape of a dildo which he had taken out while I was on the recliner...

Dr. Pace then started squeezing my nipples. He kept asking if it hurt. I immediately told him I was uncomfortable and that I wanted to get dressed...Affidavit of Gina LaVecchia, Exhibit 16, ¶¶22, 23, 24, 28.

38. One female client objected vigorously to Pace's examination and refused to pay him. When Pace harrassed her for payment she threatened to reveal that he had performed such an examination.

After my second visit I called Dr. Pace and told him that I would pay for the minerals I got from him but I refused to pay for his services...

I also told Dr. Pace that if he wanted to take me to court he could and I would tell the judge about the physical exam he had given me. Dr. Pace responded by saying, 'who is going to believe you' Affidavit of Melanie Mazor, Exhibit 17, ¶¶30, 31.

39. It is not the practice of qualified

nutritionists or registered dieticians to perform physical examinations on clients. Both expert nutritionists and registered dieticians have described the physical examinations performed by Pace to be highly unusual and grossly beyond the scope of acceptable behavior. The point is illustrated by the American Dietetic Association's "Role Delineation and Verification for Entry-Level Positions in Clinical Dietetics." This document sets forth lists of performance responsibilities for clinical dieticians. The only responsibility remotely related to physical examination, of any kind, advises that the dietician may obtain nutritionally relevant anthropometric (body measurement) data from individual clients/patients. See "American Dietetic Association's Role Delineation and Verification for Entry-Level Positions in Clinical Dietetics" annexed as Exhibit 31. See also letter of Barbara Levine, Ph.D., R.D., annexed as Exhibit 32.

40. Physical examinations and laboratory tests are routinely performed by medical doctors who may then refer patients to nutritionists or dieticians to provide guidance to help the patient change eating habits that may contribute to a nutritionally-related disease. Nutritionists and dieticians rarely recommend dietary supplements without consulting with the patient's physician. Moreover, nutritionists do not make diagnostic findings as the files reflect Pace has done. See Levine letter, Exhibit 32.

41. Even if Pace were qualified to give nutritional advice, which he is not, the performance of physical examinations raise serious questions about Pace's motives. Pace clearly abuses his position and takes advantage of women in the especially vulnerable situation of seeking counseling and treatment for serious physical and other problems.

42. Pace's fee for the consultation and tests ranges from \$235 - \$360. Exhibit 14, ¶3; Exhibit 15, ¶6; Exhibit 16, ¶7; Exhibit 17, ¶5; Exhibit 19, ¶12; Exhibit 20, ¶3; Exhibit 21, ¶4; Exhibit 22, ¶6; Exhibit 23, ¶5.

43. Pace generally insists upon full payment at the conclusion of the initial visit. Exhibit 13, ¶16; Exhibit 14, ¶13; Exhibit 15, ¶21; Exhibit 22, ¶17; Exhibit 23, ¶12.

44. Pace has consulted with at least 251 patients over a period of four years and has collected an average of \$317 in fees for his services from each consumer. In addition, consumers pay substantially more for the cost of vitamins, minerals and herbs, some of which they purchase directly from Pace. One such consumer paid a total of \$762 for products and services.

II MISREPRESENTATIONS

45. Pace has made and is now making numerous misstatements, misrepresentations and false promises to induce consumers to purchase his services. As described above, Pace represents directly and by implication that he

is capable of diagnosing, treating or prescribing remedies for various physical conditions, diseases, pains and injuries. For the reasons discussed above, such representations are false, deceptive and misleading.

46. In addition to the methods already described, Pace relies on a number of unproven clinical and non-clinical tests in an attempt to furnish a scientific basis for his diagnosis, treatments and prescriptions and to enhance his credibility as a legitimate health professional.

A. The Clinical Tests

(1) Herbal Crystallization Analysis

47. One of the first clinical tests administered when a consumer arrives at Pace's office is the Herbal Crystallization Analysis.

48. This test requires that the consumer place some saliva on a slide. Exhibit 13, ¶9; Exhibit 14, ¶7; Exhibit 15, ¶10; Exhibit 16, ¶9; Exhibit 19, ¶8; Exhibit 20, ¶4; Exhibit 21, ¶6; Exhibit 23, ¶10; Exhibit 24, ¶4; Exhibit 26, ¶20. The slide is then prepared with a solution of copper chloride and sent for analysis to Herbal Tracers, Ltd., a company located in Woodmere, N. Y. See letter of Dr. Pace, dated February 28, 1985 annexed as Exhibit 33.

49. Pace represents to his consumers that the test will determine what herbs the body is "calling for" by comparing crystal patterns found in the saliva to those appearing in nature. See promotional material of Herbal Tracers Ltd. annexed as Exhibit 34.

50. Pace receives a report from Herbal Tracers, Ltd. which purports to correlate the crystal forms in certain curative plants or herbs with those found in the saliva sample. This information is then correlated with the organ or system that is "calling for" the identified plant or herb.

51. Pace shows the consumer the final report from Herbal Tracers when the consumer returns for a second visit. Consumers are unlikely to be swayed by a disclaimer on the report stating, "The indications of this sheet do not constitute an appraisal of health, but are indications of similar crystal patterns only." See Herbal Tracers' disclaimer annexed as Exhibit 35.

52. Furthermore, Pace prescribes certain herbs to cure a consumer's ailments on the basis of these reports from Herbal Tracers.

...Dr. Pace informed me, while showing me the Herbal Saliva Test results, that there were problems with my kidneys, liver, reproductive system, blood sugar, small intestines, colon, bladder, circulatory system and hormones...Dr. Pace explained that the more 'x's' the worse the problem. I felt like a walking disaster.

Dr. Pace then recommended that I take all of the herbs listed next to each problem..."
Affidavit of Laura Landoe, Exhibit 13, ¶¶17, 18.

...Dr. Pace informed me, based on the Herbal Saliva test results, that I had a very bad digestive system and I had a colon infection.

Dr. Pace prescribed 6 liquid herbal mixtures that he said would cure both conditions..."
Affidavit of Dan Nigro, Exhibit 19, ¶¶18, 19.
See also Exhibit 20, ¶10.

53. One consumer reported serious headaches and vomiting when she took the herbs recommended by Pace. See Affidavit of Carla Schafer, Exhibit 18, ¶11.

54. Another consumer checked with her doctor, an internist, regarding the supplements recommended by Pace. She was advised that the potions might be poisonous.

The patient was taking large doses of Vitamin A (well above the recommended daily allowances). She was also consuming licorice regularly. The patient's physical exam revealed yellow palms. She was advised that her symptoms were partially due to Vitamin A toxicity which accumulated in her liver and skin. The licorice could cause low potassium because it has a diuretic effect. Ingestion of high doses of Vitamin A and licorice could indeed be dangerous to a person's health. See, letter of Vincent P. Garbitelli, M.D. annexed as Exhibit C of Affidavit of Laura Landoe, Exhibit 13.

55. Pace charges his clients approximately \$35.00 for the herbal saliva test. He is charged substantially less by Herbal Tracers - \$12.50. See Pace check stubs for payment to Herbal Tracers Ltd. annexed as Exhibit 36.

56. The New York State Department of Health has promulgated regulations governing the licensing of clinical laboratories in this State. Those regulations also set forth the categories of procedures that may be performed by a legitimate clinical laboratory. While Herbal Tracers is performing the services of a clinical laboratory by accepting human saliva specimens for analysis, the actual analysis it does is not recognized as legitimate by the State. See affidavit of Mary Anne Gardineer, Director of

State Laboratory Administrative Services annexed as Exhibit 37.

57. Support for the theory relied upon by Herbal Tracers is supposedly based on the findings of George Benner, a botanist and taxonomist, and his paper entitled "Herbal Crystals as Curative Patterns". See George Benner's findings annexed as Exhibit 38. The procedure is said to provide an accurate means of screening many bodily systems, e.g., kidneys, liver, reproductive, digestive. Officials of the State Health Department have reviewed the scientific basis for this test and found the substantiation totally lacking in credibility. See Gardineer affidavit, Exhibit 37. Benner's theory is not scientifically sound and is based solely on anecdotal evidence.

58. Dr. Varro E. Tyler, Dean of Purdue University's School of Pharmacy, and a recognized expert in the science and history of the use of herbs has challenged the basis for the Benner theory:

Scientists are aware that although the same substance or compound will ordinarily produce crystals belonging to the same geometric class or system, the exact size, shape, and appearance of these crystals is high [sic] variable, being dependent on such factors as concentration of the solution, temperature, time of formation, presence of impurities, and the like. It is not surprising, therefore, that crystals of copper chloride, formed in solutions containing varying amounts of impurities, and under varying conditions, sometimes resemble the fruits, leaves, and roots

of plants...After all, even the clouds in the sky may sometimes resemble various objects with which we are familiar. See letter of Varro E. Tyler, Dean, Purdue University Schools of Pharmacy, Nursing and Health Sciences annexed as Exhibit 39.

(2) Hair Analysis

59. Every individual who visits Pace at his office is advised that a hair analysis test is necessary. The purported purpose is to have the hair sample analyzed for vitamin deficiencies and mineral excesses or deficiencies in the individual's body. Exhibit 13, ¶8; Exhibit 15, ¶5; Exhibit 17, ¶5; Exhibit 22, ¶5; Exhibit 25, ¶6.

60. The receptionist/assistant or, in some instances, Pace himself takes a hair sample from the consumer. Exhibit 14, ¶7; Exhibit 15, ¶10; Exhibit 16, ¶9; Exhibit 17, ¶8; Exhibit 19, ¶8; Exhibit 20, ¶4; Exhibit 22, ¶10; Exhibit 24, ¶4; Exhibit 25, ¶16; Exhibit 27, ¶6.

61. Pace sends the hair sample for analysis to
[The name of the hair analysis laboratory has been redacted
in this document for reasons not related to this case.] See Pace
letter, Exhibit 33.

62. Until August 1984 some hair samples were sent to Nutra-Med Research, Inc., located at 3130 Arlington Avenue, Bronx, New York 10463. See Nutra-Med brochure Exhibit 40.

63. Nutra-Med Research was a drop off location for hair samples which were forwarded to ██████████

located in ██████████ for analysis. An analysis of the hair sample was returned to Nutra-Med which in turn forwarded it to Pace.

64. Nutra-Med was inspected in 1981 by the New York City Department of Health and advised to cease collecting specimens of human hair until such time as a permit to operate a clinical laboratory was issued. See 1981 inspection report annexed as Exhibit 41. Nutra-Med Research, Inc. has ceased doing business in New York or Illinois. Pace now sends samples directly to ██████████ Laboratory.

65. The analysis which Pace receives from ██████████ identifies trace element deficiencies, estimates body levels of major nutrient minerals and toxic heavy metals, and screens for certain diseases. The analysis lists major nutrient levels, trace elements and potentially toxic heavy metals in the hair sample, matched with "normal" ranges for each. A sample "Doctor's" copy of a Mineral Analysis Report is annexed as Exhibit 42.

66. Pace reviews the final report with the consumer when the consumer returns for a second visit.

67. ██████████ includes with the results a Nutrient Mineral Level Chart which lists inter alia daily dosages, sources, deficiency symptoms and therapeutic applications for each mineral. See the chart annexed as Exhibit 43.

68. A similar Toxic Metal Level Chart shows sources of each toxic metal in the environment, bodily parts affected, toxicity symptoms and nutritional therapies to correct toxic mineral levels. See the chart annexed as Exhibit 43.

69. The use of hair analysis for the purpose of determining nutrient levels has received no support from experts. Dr. K. Michael Hambidge authored the most frequently cited scientific paper on the subject. His article is annexed as Exhibit 44. Dr. Hambidge's research, funded in part by the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, explained that there is a dearth of information on how well hair concentrations of the various elements correlate with levels in the tissues and body fluids. Furthermore, there is a lack of data on what constitutes a normal range of trace element concentrations in the hair. Also, because hair absorbs trace elements from the environment, it is difficult to know the source of the trace elements detected. Other variables include hair treatment, different rates of hair growth, age, sex and shampoo. See also letter from Richard Jacobs, Ph.D to Rossen annexed as Exhibit 45, and "Misuse of Hair Analysis for Nutritional Assessment," by Richard Rivlin, M.D., annexed as Exhibit 46.

70. Dr. Stephen Barret, Editor of Nutrition Forum newsletter has conducted a study of commercial hair analysis services to determine whether the multi-element analysis

performed by these laboratories is reliable and consistent. Hair samples from two healthy teenagers were sent under assumed names to 13 such commercial laboratories, including ~~XXXXXXXXXX~~. Dr. Barrett found that the reported levels of most minerals varied considerably between identical samples sent to the same lab, and from lab to lab. Further, the laboratories disagreed among themselves about what was "normal" or "usual". ~~XXXXXXXXXX~~ listed as probable patient conditions for Dr. Barrett's two healthy subjects, hypoglycemia, headaches, and impaired carbohydrate metabolism. It also suggested checking to rule out 15 other possible conditions.

71. The New York State Department of Health does not presently issue permits to laboratories performing hair analysis for the purpose of measuring nutrient levels. See Gardineer affidavit, Exhibit 37.

72. ~~XXXXXXXXXX~~ Laboratory does not have a permit from the New York State Department of Health to operate as a clinical laboratory, accepting human specimens from New York consumers. It is therefore doing so illegally. See letter of the Department to ~~XXXXXXXXXX~~ annexed as Exhibit 47.

73. ~~XXXXXXXXXX~~ Laboratory charges Pace \$17.50 for a hair analysis report. Pace charges his clients \$30 - 40. Pace makes recommendations for vitamin and mineral supplements to clients on the basis of the reports issued by ~~XXXXXXXXXX~~. These reports do not provide a reasonable

scientific basis for diagnostic conclusions and treatment advice with respect to physical conditions.

Dr. Pace also told me that, based on the hair analysis results, there were toxins in my body. Affidavit of Laura Landoe, Exhibit 13, ¶21.

...Dr. Pace informed me that I had too much lead in my system and that I was deficient in several other vitamins and minerals...
Affidavit of Ralph Simon, Exhibit 24, ¶10.

B. Nutrient Deficiency Survey and Metabolism Classification Questionnaire

74. One of the first tests administered to consumers at Pace's office is the Nutrient Deficiency Test. Exhibit 13, ¶10; Exhibit 15, ¶10; Exhibit 17, ¶8; Exhibit 19, ¶8; Exhibit 20, ¶4; Exhibit 21, ¶6; Exhibit 27, ¶8.

75. The questionnaire, called the Nutrient Survey (Exhibit 48), is authored by Dr. Kurt Donsbach and is sent to Donsbach University School of Nutrition for computer processing. See letter of Dr. Pace, Exhibit 33.

76. According to Pace, the purpose of the survey is to determine "levels of vitamins, minerals, enzymes, glandulars and amount of consumption of fats and carbohydrates." See Pace letter, Exhibit 33. The completed report recommends nutrient amounts to be included in a daily supplement program.

77. Dr. Donsbach, in a pamphlet describing the survey, states that it correlates "body language into signs of nutrient deficiency". Without suggesting reference to any individual data, he further advises nutritionists "to recommend a broad spectrum vitamin-mineral supplement, a

broad spectrum digestive enzyme supplement, and a multiple glandular product as a beginning program for most individuals." See booklet, Dr. Donsbach Tells You What You Always Wanted to Know About The Nutrient Deficiency Test annexed as Exhibit 49.

78. Pursuant to an investigation of a chiropractor who used the Nutrient Deficiency Survey to diagnose nutritional ailments, the United States Food and Drug Administration and United States Postal Inspection Service recently obtained and analyzed the computer program for the Nutrient Deficiency Test. FDA experts demonstrated that regardless of the data submitted to the program, every printout contained the statement "It appears that you have several nutrient deficiencies..." An individual's nutrient status was never rated above normal, and the suggested amounts of vitamins and minerals also rarely varied. Furthermore, though the test includes a "Diet Appraisal," the answers to this section do not affect the printout of nutritional deficiencies. See letter to Robert Vawter from the Food and Drug Administration annexed as Exhibit 50.

79. The fact that the results are pre-ordained is further borne out by a sample of 25 test results from Pace's clients. All of the results of the Nutrient Deficiency Test, found a nutrient deficiency and recommended supplements. Sixteen contained identical recommendations. Nutrition experts who have reviewed the questionnaire found that many of the questions have no bearing on, and are not

typical of, the questions used by professionals to determine specific nutrient excesses or deficiencies. In fact, the questions in the Nutrient Deficiency Survey are diagnostic in nature and call for information solely within the expertise of a physician. See Glenn letter attached as Exhibit 51 and affidavit of Victor Herbert, M.D., sworn to March 8, 1982 attached as Exhibit 52.

80. Experts who have reviewed the test describe it as relying on questions which use non-specific symptoms each of which may have to do with a variety of physical problems. Without proper physical examination and laboratory tests such as a complete blood analysis, the responses to such questionnaires are meaningless. See Herbert affidavit attached as Exhibit 52.

81. Moreover, nutritionists and medical doctors agree that most individuals do not in fact suffer from nutrient deficiencies. See Herbert affidavit attached as Exhibit 52, and affidavit of Victor Frattali, Deputy Director, Division of Nutrition, Bureau of Foods, USFDA attached as Exhibit 53.

82. Pace also uses a Metabolism Questionnaire in addition to the Nutrient Deficiency Test. See the questionnaire annexed as Exhibit 54. This questionnaire requests extensive information about food consumed each day and the individual's physical reaction to the food. It then attempts to classify people into three "metabolic type" groups. This data is used to recommend a diet and dietary

supplements to bring the individual's body chemistry into balance. One nutrition expert who reviewed the Metabolism Classification Questionnaire, concluded that questions used in the test were not typical of those used by qualified nutritionists and some had no known scientific basis. See Levine letter attached as Exhibit 32.

83. Moreover, the questions in this questionnaire, like the Nutrient Deficiency Survey, are not specific and may relate to symptoms of a variety of conditions. The significance of the symptoms cannot be evaluated by a nutritionist alone, without the assistance of a medical doctor who can perform a physical examination and laboratory tests. See Levine letter attached as Exhibit 32 and Rivlin letter attached as Exhibit 51.

C. Dietary Assessment Methodology Generally

84. The reliability and validity of dietary assessment methodologies generally have come under critical attack in the scientific literature. Specifically, it has been found that the "dietary history" method, like the one used in the questionnaires administered by Pace, which attempts to determine usual nutrient intake patterns, is not accurate. Such methods rely for their accuracy upon consumers' memories. In fact, it has been demonstrated that consumers often can't remember precisely what they've eaten, let alone the size of the portion. Furthermore, validation requires that the truth be known and this presents overwhelming practical problems. See article of Gladys

Block, A Review of Validation of Dietary Assessment Methods annexed as Exhibit 55.

III CONCEALMENT OF MATERIAL FACTS

85. Pace uses a wide variety of techniques to enhance his credibility as a well educated nutritionist. His manner is calm, confident and convincing. At no time does he disclose to consumers any of the key material facts that might create doubt or dampen the trust he seeks to build.

86. It is unlikely that consumers would agree to pay up to \$700 for advice and products from Pace if he disclosed that he received his education from an unaccredited correspondence school.

87. Similarly, the fact that the tests Pace performs on hair and saliva are not recognized as legitimate means of determining nutrient levels, is a material fact which should be known to consumers. Without such information consumers are unable to make an informed judgment whether to pay for such tests.

88. Perhaps most significant among Pace's failures to disclose material facts, is his failure to inform consumers of his lack of qualifications to perform physical examinations. Thus, female consumers are being misled into believing that Pace has the expertise to conduct physical examinations on them. Women have submitted to vaginal and breast examinations, which were a gross misuse of Pace's supposed position as a nutritionist. Had the

women known that Pace was in fact not qualified to perform such examinations, they would not have permitted themselves to be subjected to such examinations or paid for Pace's supposed expertise.

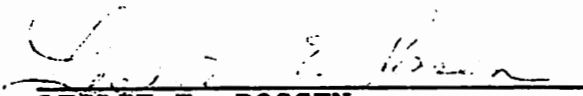
IV CONCLUSION

89. Respondent is currently engaged in a scheme which has already victimized many consumers who have paid large sums for his services and remedies. So sophisticated are respondent's methods that it is likely that many of Pace's consumers remain unaware of his lack of credentials, or the lack of scientific support for his approach, treatment, diagnoses or the clinical and other tests he performs. Moreover, it appears that some women may be too embarrassed to discuss publicly their experiences with Pace.

90. Pace continues to operate his practice located at Garden City, New York and continues to represent himself as a well-credentialed nutrition consultant to consumers.

WHEREFORE, it is respectfully requested that the petition be granted in all respects.

Dated: New York, New York
July 22, 1985.



LESLIE E. ROSSEN