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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **TANYA MICHELLE COOK-RILEY, AKA**
13 **TANYA MICHELLE COOK**
14 **1445 Fruitvale Ave., Unit 229**
San Jose, CA 95128
15 **Registered Nurse License No. 802287**
16 Respondent.

Case No.

2018-420

A C C U S A T I O N

18 Complainant alleges:

19 PARTIES

20 1. Joseph L. Morris, PhD, MSN, RN (Complainant) brings this Accusation solely in his
21 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
22 Department of Consumer Affairs.

23 2. On or about July 21, 2011, the Board issued Registered Nurse License Number
24 802287 to Tanya Michelle Cook-Riley, also known as Tanya Michelle Cook (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on March 31, 2019, unless renewed.

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1 (2) Direct and indirect patient care services, including, but not limited to,
2 the administration of medications and therapeutic agents, necessary to implement a
3 treatment, disease prevention, or rehabilitative regimen ordered by and within the
4 scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as
5 defined by Section 1316.5 of the Health and Safety Code.

6 (3) The performance of skin tests, immunization techniques, and the
7 withdrawal of human blood from veins and arteries.

8 (4) Observation of signs and symptoms of illness, reactions to treatment,
9 general behavior, or general physical condition, and (A) determination of whether the
10 signs, symptoms, reactions, behavior, or general appearance exhibit abnormal
11 characteristics, and (B) implementation, based on observed abnormalities, of
12 appropriate reporting, or referral, or standardized procedures, or changes in treatment
13 regimen in accordance with standardized procedures, or the initiation of emergency
14 procedures.

15 (c) 'Standardized procedures,' as used in this section, means either of the
16 following:

17 (1) Policies and protocols developed by a health facility licensed
18 pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health
19 and Safety Code through collaboration among administrators and health professionals
20 including physicians and nurses.

21 (2) Policies and protocols developed through collaboration among
22 administrators and health professionals, including physicians and nurses, by an
23 organized health care system which is not a health facility licensed pursuant to
24 Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety
25 Code.

26 The policies and protocols shall be subject to any guidelines for
27 standardized procedures that the Division of Licensing of the Medical Board of
28 California and the Board of Registered Nursing may jointly promulgate. If
promulgated, the guidelines shall be administered by the Board of Registered
Nursing.

(d) Nothing in this section shall be construed to require approval of
standardized procedures by the Division of Licensing of the Medical Board of
California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the
practice of nursing for those licensed pursuant to the provisions of the chapter, or
develop standardized procedures or protocols pursuant to this chapter, unless so
authorized by this chapter, or specifically required under state or federal statute.
AState agency@ includes every state office, officer, department, division, bureau,
board, authority, and commission.

6. Code section 2725.1 states:

(a) Notwithstanding any other provision of law, a registered nurse may
dispense drugs or devices upon an order by a licensed physician and surgeon or an
order by a certified nurse-midwife, nurse practitioner, or physician assistant issued
pursuant to Section 2746.51, 2836.1, or 3502.1, respectively, if the registered nurse is

1 functioning within a licensed primary care clinic as defined in subdivision (a) of
2 Section 1204 of, or within a clinic as defined in subdivision (b), (c), (h), or (j) of
3 Section 1206 of, the Health and Safety Code.

4 (b) No clinic shall employ a registered nurse to perform dispensing duties
5 exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a
6 pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered
7 nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a
8 certified nurse-midwife who functions pursuant to a standardized procedure or
9 protocol described in Section 2746.51 or a nurse practitioner who functions pursuant
10 to a standardized procedure described in Section 2836.1, or protocol, shall not include
11 substances included in the California Uniform Controlled Substances Act (Division
12 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this
13 section shall exempt a clinic from the provisions of Article 13 (commencing with
14 Section 4180) of Chapter 9.

15 (c) Nothing in this section shall be construed to limit any other authority
16 granted to a certified nurse-midwife pursuant to Article 2.5 (commencing with
17 Section 2746), to a nurse practitioner pursuant to Article 8 (commencing with Section
18 2834), or to a physician assistant pursuant to Chapter 7.7 (commencing with Section
19 3500).

20 (d) Nothing in this section shall be construed to affect the sites or types of
21 health care facilities at which drugs or devices are authorized to be dispensed
22 pursuant to Chapter 9 (commencing with Section 4000).

23 7. Code section 2726 states:

24 Except as otherwise provided herein, this chapter confers no authority to
25 practice medicine or surgery.

26 8. Code section 2750 provides, in pertinent part, that the Board may discipline any
27 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
28 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

9. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
Code, the Board may renew an expired license at any time within eight years after the expiration.

10. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny
an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

1 (1) Incompetence, or gross negligence in carrying out usual certified or
licensed nursing functions.

2 ...

3
4 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
the violating of, or conspiring to violate any provision or term of this chapter or regulations
adopted pursuant to it.

5 ...

6
7 (i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a
licensed physician or not, in the performance of, or arranging for, a violation of any of the
provisions of Article 12 (commencing with Section 2220) of Chapter 5.

8
9 11. California Code of Regulations, title 16, section 1442, states:

10 As used in Section 2761 of the code, 'gross negligence' includes an
11 extreme departure from the standard of care which, under similar circumstances,
12 would have ordinarily been exercised by a competent registered nurse. Such an
13 extreme departure means the repeated failure to provide nursing care as required or
failure to provide care or to exercise ordinary precaution in a single situation which
the nurse knew, or should have known, could have jeopardized the client's health or
life.

14 12. California Code of Regulations, title 16, section 1443, states:

15 As used in Section 2761 of the code, 'incompetence' means the lack of
16 possession of or the failure to exercise that degree of learning, skill, care and
experience ordinarily possessed and exercised by a competent registered nurse as
described in Section 1443.5.

17
18 13. California Code of Regulations, title 16, section 1471, states:

19 (a) "Standardized procedure functions" means those functions specified
20 in Business and Professions Code Section 2725(c) and (d) which are to be performed
according to 'standardized procedures.'

21 (b) "Organized health care system" means a health facility which is not
22 licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the
Health and Safety Code and includes, but is not limited to, clinics, home health
23 agencies, physicians' offices and public or community health services.

24 (c) "Standardized procedures" means policies and protocols formulated
25 by organized health care systems for the performance of standardized procedure
functions.

26 14. California Code of Regulations, title 16, section 1474, states:

27
28 Following are the standardized procedure guidelines jointly promulgated by the
Medical Board of California and by the Board of Registered Nursing:

1 (a) Standardized procedures shall include a written description of the method used in
2 developing and approving them and any revision thereof.

3 (b) Each standardized procedure shall:
4

5 (1) Be in writing, dated and signed by the organized health care system
6 personnel authorized to approve it.

7 (2) Specify which standardized procedure functions registered nurses may
8 perform and under what circumstances.

9 (3) State any specific requirements which are to be followed by registered
10 nurses in performing particular standardized procedure functions.

11 (4) Specify any experience, training, and/or education requirements for
12 performance of standardized procedure functions.

13 (5) Establish a method for initial and continuing evaluation of the competence
14 of those registered nurses authorized to perform standardized procedure functions.

15 (6) Provide for a method of maintaining a written record of those persons
16 authorized to perform standardized procedure functions.

17 (7) Specify the scope of supervision required for performance of standardized
18 procedure functions, for example, immediate supervision by a physician.

19 (8) Set forth any specialized circumstances under which the registered nurse is
20 to immediately communicate with a patient's physician concerning the patient's condition.

21 (9) State the limitations on settings, if any, in which standardized procedure
22 functions may be performed.

23 (10) Specify patient record keeping requirements.

24 (11) Provide for a method of periodic review of the standardized procedures.
25

26 COST RECOVERY

27 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
included in a stipulated settlement.

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1 FACTUAL BACKGROUND

2 16. Respondent was employed as a Registered Nurse from October 2011 through
3 December 2015 at A Youthful Reflection, a facility performing laser hair removal and facial
4 rejuvenation procedures, in San Jose, California (hereinafter "Reflection"). Respondent stopped
5 working at Reflection in December 2015.

6 17. Reflection is owned and operated by TB, a licensed chiropractor, and his wife KB,
7 who acted as office manager and who was responsible for hiring the nursing staff. There is no
8 physician ownership or supervision of Reflection.

9 18. Respondent performed hair removal and facial rejuvenation procedures on patients at
10 Reflection. Working with lasers and light-based technologies is considered medical treatment.
11 Respondent concedes she was aware that Reflection was owned and operated by the TB and KB.
12 Respondent was not only unaware of the difference between a Doctor of Chiropractic and a
13 Medical Doctor, but believed that a chiropractor is a physician with a spine/back specialty.

14 FIRST CAUSE FOR DISCIPLINE

15 (Incompetence/Gross Negligence)

16 19. Respondent's license is subject to discipline under section 2761(a)(1), and/or section
17 2725(b)(2) of the Code, for incompetence and gross negligence. As described in paragraphs 16-
18 18 above, while employed as a Registered Nurse, Respondent rendered treatment to patients at
19 Reflection under the supervision of a chiropractor, not a physician. A Registered Nurse would be
20 aware of and compliant with her scope of practice by working under the supervision of a medical
21 physician while performing medical procedures, and/or arranging for a prior exam by a physician
22 before rendering medical procedures upon a patient.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct—Aiding and Abetting the Unlicensed Practice of Medicine and
25 the Unlicensed Practice of Medicine)

26 20. Respondent's license is subject to discipline under section 2761(a), section 2761(d),
27 section 2761(i), section 2725.1, section 2725(b)(2), and section 2726 of the Code, for
28 unprofessional conduct, and/or aiding or abetting same. As described in paragraphs 16-19 above,

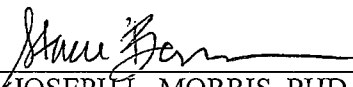
1 Respondent engaged in the unlicensed practice of medicine by working in her role as a Registered
2 Nurse at Reflection without direction from a physician, and without arranging for a prior exam
3 for patients before performing medical procedures. Further, Respondent engaged in
4 unprofessional conduct, and aided or abetted same, by failing to ensure that the medical
5 treatment she provided was authorized by a physician, was within her scope of practice as a
6 Registered Nurse, or was within and authorized by any written standardized procedures.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 802287, issued to Tanya
11 Michelle Cook-Riley, also known as Tanya Michelle Cook;
- 12 2. Ordering Tanya Michelle Cook-Riley, also known as Tanya Michelle Cook, to pay
13 the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
14 case, pursuant to Business and Professions Code section 125.3; and,
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: January 4, 2018


18 for JOSEPH L. MORRIS, PHD, MSN, RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

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