

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 CHRISTOPHER M. YOUNG
Deputy Attorney General
4 State Bar No. 238532
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5584
6 Facsimile: (415) 703-5480
E-mail: Chris.Young@doj.ca.gov
7 *Attorneys for Complainant*

I hereby certify the
foregoing to be a true copy
of the documents on file in our office.

BOARD OF REGISTERED NURSING



Joseph L. Morris, PhD, MSN, RN
Executive Officer



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

11 In the Matter of the Accusation Against:

Case No.

2018-419

12 **DIXIE LEIGH HERNANDEZ**
13 **2118 Canoas Garden Avenue, Apt. H084**
San Jose, CA 95125

A C C U S A T I O N

14 **Registered Nurse License No. 95073189**

15 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about September 26, 2015, the Board issued Registered Nurse License Number
23 95073189 to Dixie Leigh Hernandez (Respondent). The Registered Nurse License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on November
25 30, 2018, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

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

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

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

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

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

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

28 (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.
A State 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
functioning within a licensed primary care clinic as defined in subdivision (a) of
Section 1204 of, or within a clinic as defined in subdivision (b), (c), (h), or (j) of
Section 1206 of, the Health and Safety Code.

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

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

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

20 7. Code section 2726 states:

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

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

26 9. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
27 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
28 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) Incompetence, or gross negligence in carrying out usual certified or
licensed nursing functions.

...

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

3 ...

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

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

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

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

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

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

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

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

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

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

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

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

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(b) Each standardized procedure shall:

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

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

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

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

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

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

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

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

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

(10) Specify patient record keeping requirements.

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

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 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.

FACTUAL BACKGROUND

16. Respondent was employed as a Registered Nurse from October 2015 through approximately the middle of August 2016 at A Youthful Reflection, a facility performing laser

1 hair removal and facial rejuvenation procedures, in San Jose, California (hereinafter
2 “Reflection”). Respondent stopped working at Reflection sometime in August of 2016.

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

6 18. Respondent performed hair removal and facial rejuvenation procedures on patients at
7 Reflection. Working with lasers and light-based technologies is considered medical treatment.
8 Respondent concedes she was aware that Reflection was owned and operated by TB and KB.
9 Respondent was unaware that she could not perform medical treatment under the supervision of a
10 chiropractor.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Incompetence/Gross Negligence)

13 19. Respondent’s license is subject to discipline under section 2761(a)(1) and section
14 2725(b)(2) of the Code, for incompetence and gross negligence. As stated above in paragraphs
15 16-18, while working as a Registered Nurse, Respondent rendered treatment to patients at
16 Reflection under the supervision of a chiropractor, not a physician. A Registered Nurse would be
17 aware of and compliant with her scope of practice by working under the supervision of a medical
18 physician while performing medical procedures, and/or arranging for a prior exam by a physician
19 before rendering medical procedures upon a patient.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct—Aiding and Abetting the Unlicensed Practice of Medicine and
22 the Unlicensed Practice of Medicine)

23 20. Respondent’s license is subject to discipline under section 2761(a), section 2761(d),
24 section 2761(i), section 2725.1, section 2725(b)(2), and section 2726 of the Code, for
25 unprofessional conduct, and/or aiding or abetting same. As described in paragraphs 16-19 above,
26 Respondent engaged in the unlicensed practice of medicine by working in her role as a Registered
27 Nurse at Reflection without direction from a physician, and without arranging for a prior exam
28 for patients before performing medical procedures. Further, Respondent engaged in

1 unprofessional conduct, and aided or abetted same, by failing to ensure that the medical
2 treatment she provided was authorized by a physician, was within her scope of practice as a
3 Registered Nurse, or was within and authorized by any written standardized procedures.

4 PRAYER

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

- 7 1. Revoking or suspending Registered Nurse License Number 95073189, issued to
8 Dixie Leigh Hernandez;
- 9 2. Ordering Dixie Leigh Hernandez to pay the Board of Registered Nursing the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: *January 4, 2018* *for Joseph L. Morris*
15 JOSEPH L. MORRIS, PHD, MSN, RN
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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