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

12 In the Matter of the Accusation Against:

Case No.

2018-421

13 **ERIKA CRISTINA MACIAS**
14 **8121 Park Villa Cir.**
15 **Cupertino, CA 95014**

A C C U S A T I O N

Registered Nurse License No. 760809

Respondent.

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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 October 1, 2009, the Board issued Registered Nurse License Number
23 760809 to Erika Cristina Macias (Respondent). The Registered Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on December 31,
25 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.

STATUTORY & REGULATORY PROVISIONS

4. Business and Professions Code (Code) section 2052 states:

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate [to practice medicine] or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

5. Code section 2725 states:

(a) In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

(b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act] means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

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

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

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

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

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

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

17 (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.

19 (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.

23 6. Code section 2725.1 states:

24 (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 August 2012 through December 2016 at A Youthful Reflection, a facility performing laser hair removal and facial

1 rejuvenation procedures, in San Jose, California (hereinafter "Reflection"). Respondent stopped
2 working at Reflection in December 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 believed that she could perform medical procedures 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 described above in
15 paragraphs 16-18, Respondent rendered treatment to patients at Reflection under the supervision
16 of a chiropractor, not a physician. A Registered Nurse would be aware of and compliant with her
17 scope of practice by working under the supervision of a medical physician while performing
18 medical procedures, and/or arranging for a prior exam by a physician before rendering medical
19 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)

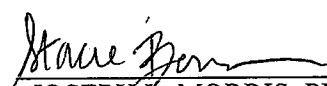
23 20. Respondent's license is subject to discipline under section 2761(a), section 2761(d),
24 section 2761(i), section 2725.1, section 2725(b)(2), and section 2726 of the Code, for
25 unprofessional conduct, and aiding or abetting same. As described in paragraphs 16-19 above,
26 Respondent engaged 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/or 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/or 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 760809, issued to Erika
8 Cristina Macias;
- 9 2. Ordering Erika Cristina Macias 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 
15 *for* 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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