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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MICHELLE RENEE NAUGHTON** **AKA MICHELLE RENEE BROWN** **5501 Waring Road** **San Diego, CA 92120** **Registered Nurse License No. 622149** Respondent.	Case No. 2013-1149 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), Department of Consumer Affairs.

2. On or about July 18, 2003, the Board of Registered Nursing issued Registered Nurse License Number 622149 to Michelle Renee Naughton, also known as Michelle Renee Brown (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

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JURISDICTION

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

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

5. 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.

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time.

STATUTORY AUTHORITIES

7. Section 2052 of the Code states in pertinent part:

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

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8. Section 2725 of the Code states in pertinent part:

(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 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:

. . . .

(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.

. . . .

(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.

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

(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.

(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.

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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.

(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 this 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. "State agency" includes every state office, officer, department, division, bureau, board, authority, and commission.

9. Section 2725.1 of the Code 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.

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

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

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

10. Section 2726 of the Code states:

Except as otherwise provided herein, this chapter [the Nursing Practice Act] confers no authority to practice medicine or surgery.

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11. 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:

. . . .

(3) The use of advertising relating to nursing which violates Section 17500.

. . . .

(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 [the Nursing Practice Act] or regulations adopted pursuant to it.

. . . .

(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 [the Medical Practice Act].

. . . .

12. Section 2775 of the Code states:

A nursing corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are registered nurses are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a nursing corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Registered Nursing.

13. Section 2776 of the Code states:

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

14. Section 2778 of the Code states:

The name of a nursing corporation and any name or names under which it may render professional services shall contain the words 'nursing' or 'registered nursing,' and wording or abbreviations denoting corporate existence.

15. Section 2779 of the Code states:

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a nursing corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

16. Section 2780 of the Code states:

The income of a nursing corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the nursing corporation.

17. Section 17500 of the Code states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

18. Corporations Code section 13401 provides in relevant part:

As used in this part:

(a) "Professional services" means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided

and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by . . . the Board of Registered Nursing . . . shall not be required to obtain a certificate of registration in order to render those professional services.

. . . .

(d) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

. . . .

19. Corporations Code section 13401.5 provides in relevant part:

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

. . . .

(f) Nursing corporation.

(1) Licensed physicians and surgeons.

(2) Licensed doctors of podiatric medicine.

(3) Licensed psychologists.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.

(9) Licensed acupuncturists.

(10) Naturopathic doctors.

(11) Licensed professional clinical counselors.

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20. Health and Safety Code section 1200 provides in relevant part:

(a) As used in this chapter, "clinic" means an organized outpatient health facility that provides direct medical, surgical, dental, optometric, or podiatric advice, services, or treatment to patients who remain less than 24 hours, and that may also provide diagnostic or therapeutic services to patients in the home as an incident to care provided at the clinic facility. Nothing in this section shall be construed to prohibit the provision of nursing services in a clinic licensed pursuant to this chapter. In no case shall a clinic be deemed to be a health facility subject to the provisions of Chapter 2 (commencing with Section 1250)

. . . .

21. Health and Safety Code section 1201 provides:

"License" means a basic permit to operate a clinic. A license may only be granted to a clinic of a type enumerated in Section 1204 or 1204.1, and the license shall not be transferable. However, the issuance of a license upon a change of ownership shall not of itself constitute a project within the meaning of Section 127170.

22. Health and Safety Code section 1204 provides:

Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a)(1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax- exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under

either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

23. Health and Safety Code section 1205 provides in relevant part:

Except as provided in [Health and Safety Code] Section 1206, no person, firm, partnership, association, corporation, or public agency shall operate, establish, manage, conduct or maintain a clinic in this state without first obtaining a license therefor as provided in this chapter; nor shall any such person, firm, partnership, association, corporation, or public agency provide any special service without obtaining a special permit therefor. However, any licensed clinic offering any service which is later designated by regulation of the state department as a special service shall be allowed to continue offering such service until the state department evaluates the quality of such service and issues a special permit therefor or notifies the licensee that it is not eligible for a special permit and must cease and desist from offering such service.

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24. Health and Safety Code section 1206 provides in relevant part:

This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

. . . .

25. Health and Safety Code section 1250 provides:

As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital. The general acute care hospital operated by the State Department of Developmental Services at Agnews Developmental Center may, until June 30, 2007, provide surgery and anesthesia services through a contract or agreement with another acute care hospital. Notwithstanding the requirements of this subdivision, a general acute care hospital operated by the Department of Corrections and Rehabilitation or the Department of Veterans Affairs may provide surgery and anesthesia services during normal weekday working hours, and not provide these services during other hours of the weekday or on weekends or holidays, if the general acute care hospital otherwise meets the requirements of this section.

A "general acute care hospital" includes a "rural general acute care hospital." However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A "rural general acute care hospital" shall meet either of the following conditions:

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(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c)(1) "Skilled nursing facility" means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(2) "Skilled nursing facility" includes a "small house skilled nursing facility (SHSNF)," as defined in Section 1323.5.

(d) "Intermediate care facility" means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer persons with developmental disabilities who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to persons with developmental disabilities whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled-nursing" means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for persons with developmental disabilities who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons with developmental

disabilities or who demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i)(1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than 12 beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, persons with physical disabilities, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A person who is catastrophically and severely disabled means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a person who is catastrophically disabled shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4)(A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons, or located in a county of the 16th class pursuant to Section 28020 of the Government Code, may have not more than 25 beds for the purpose of serving persons who are terminally ill.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving persons who are catastrophically and severely disabled.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j)(1) "Correctional treatment center" means a health facility operated by the Department of Corrections and Rehabilitation, the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or a county, city, or city and county law enforcement agency that, as determined by the department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards who may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the Department of Corrections and Rehabilitation from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) or as a nursing facility in the federal Medicaid Program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), or as both.

(l) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

(m) "Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN)" means a homelike facility with a capacity of four to eight, inclusive, beds that provides 24-hour personal care, developmental services, and nursing supervision for persons with developmental disabilities who have continuous needs for skilled nursing care and have been certified by a physician

and surgeon as warranting continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated. ICF/DD-CN facilities shall be subject to licensure under this chapter upon adoption of licensing regulations in accordance with Section 1275.3. A facility providing continuous skilled nursing services to persons with developmental disabilities pursuant to Section 14132.20 or 14495.10 of the Welfare and Institutions Code shall apply for licensure under this subdivision within 90 days after the regulations become effective, and may continue to operate pursuant to those sections until its licensure application is either approved or denied.

(n) "Hospice facility" means a health facility licensed pursuant to this chapter with a capacity of no more than 24 beds that provides hospice services. Hospice services include, but are not limited to, routine care, continuous care, inpatient respite care, and inpatient hospice care as defined in subdivision (d) of Section 1339.40, and is operated by a provider of hospice services that is licensed pursuant to Section 1751 and certified as a hospice pursuant to Part 418 of Title 42 of the Code of Federal Regulations.

REGULATIONS

26. California Code of Regulations, title 16, (Regulations) section 1470, states:

The Board of Registered Nursing in conjunction with the Medical Board of California (see the regulations of the Medical Board of California, Article 9.5, Chapter 13, Title 16 of the California Code of Regulations) intends, by adopting the regulations contained in the article, to jointly promulgate guidelines for the development of standardized procedures to be used in organized health care systems which are subject to this rule. The purpose of these guidelines is:

(a) To protect consumers by providing evidence that the nurse meets all requirements to practice safely.

(b) To provide uniformity in development of standardized procedures.

27. Regulations, section 1471, states:

For purposes of this article:

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

(b) "Organized health care system" means a health facility which is not 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 agencies, physicians' offices and public or community health services;

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

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28. Regulations, section 1472, states:

An organized health care system must develop standardized procedures before permitting registered nurses to perform standardized procedure functions. A registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures; and must provide the system with satisfactory evidence that the nurse meets its experience, training, and/or education requirements to perform such functions.

29. Regulations, section 1474, states:

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

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

(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.

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COSTS

30. 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.

DRUGS

31. **Botox** is a dangerous drug that can be dispensed only upon a prescription, as defined by and pursuant to Code section 4022. Botox (Botulinum Toxin Type A) - Botox Cosmetic is a purified protein produced by the Clostridium botulinum bacterium, which reduces the activity of the muscles that cause frown lines and wrinkles to form over time when injected under the skin.

32. **Restylane** is a dangerous drug that can be dispensed only upon a prescription, as defined by and pursuant to Code section 4022. Restylane is composed of non-animal stabilized hyaluronic acid, a substance found naturally in the human body. Restylane is injected using a fine needle into the dermis below the wrinkle and lifts the wrinkle out to the desired correction.

33. **Juvederm** is a dangerous drug that can be dispensed only upon a prescription, as defined by and pursuant to Code section 4022. Juvederm injectable gel is a sterile, biodegradable, non-pyrogenic, viscoelastic, clear, colorless, homogenized gel implant, composed of crosslinked hyaluronic acid formulated to a concentration of 22-26 mg/mL, suspended in a physiological buffer. Depending on its formulation, Juvederm should be injected using a 27-30 guage needle, and is indicated for volumizing and correction of facial folds and wrinkles.

FACTS

34. On or about September 23, 2005, Respondent, who was licensed as a registered nurse but not licensed as a physician and surgeon, and Elizabeth O., an unlicensed person, formed a professional corporation by the name of "Timeless Age-Defying Laser Clinic, Inc.," located at 2020 Camino Del Rio North, #202, San Diego, California. In a Statement of Information filed with the California Secretary of State on July 2, 2010, Elizabeth O. was identified as the

professional corporation's Chief Executive Officer, Chief Financial Officer, Director and Agent for Service of Process, and Respondent was identified as the professional corporation's Secretary and Director. On the professional corporation's website located at www.timelesslaserclinic.com, Respondent was identified as the "Lead Registered Nurse/Co-Owner," Elizabeth O. was identified as the "Clinic Director/Co-Owner," and Daniel H., M.D. was identified as the "Medical Director/Co-Owner."

35. At all times mentioned, Timeless Age-Defying Laser Clinic, Inc. was not a licensed clinic as defined in Health and Safety Code section 1204, was not an organized health care system as defined in title 16, Regulations, section 1471, subdivision (b), and was not a health facility as defined in Health and Safety Code section 1250.

36. Since July 11, 2011, Timeless Age-Defying Laser Clinic advertised on its website that patients may obtain the following medical services at Timeless Age-Defying Laser Clinic:

"MEDICAL Services

"Botox® Cosmetic Treatment

"Restylane® & Juvederm®

"Laser Hair Removal

"Laser Vein Removal

"IPL Photofacial Therapy

"Chemical Peel

"Laser Genesis Skin Rejuvenation

"Refirme® Skin Tightening

"Treatment Enhancements

"B12 Shot"

37. Since July 11, 2011, Timeless Age-Defying Laser Clinic advertised on its website the following statements:

a. "[Dr. Daniel H's] concern for his patients led him to partner with Elizabeth and Michelle to open a facility focused on correcting aging and sun-damaged skin." In fact, Dr. Daniel H. had no ownership interest in Timeless Age-Defying Laser Clinic.

b. "At this time [Respondent] partnered with Elizabeth and [Dr. Daniel H.] to create Timeless Age Defying Laser Clinic [sic]. [Respondent] is passionate about skincare and thrilled to offer the latest in Laser technology to assist people age with grace and continue to look Timeless." In fact, Dr. Daniel H. had no ownership interest in Timeless Age-Defying Laser Clinic.

c. "[Elizabeth O.] took her love for skin care and created Timeless Age Defying Laser Clinic [sic]. In 2006, she, [Respondent] and [Dr. Daniel H.] opened their doors for the first time. Since then she has enjoyed watching Timeless Laser Clinic [sic] grow and watching her long time clients achieve their skin care goals." In fact, Dr. Daniel H. had no ownership interest in Timeless Age-Defying Laser Clinic.

d. "[Summer S., RN] Registered Nurse . . . 'There is such great satisfaction in seeing how happy my clients are with the results from the laser procedures I provide.'"

e. "[Elena D.] Lead Medical Esthetician . . . has over nine years of experience working in the medical esthetics with a spa emphasis." In fact, there is no recognized practice as a medical esthetician in California.

f. "[Amy R.] Medical Esthetician . . ." In fact, there is no recognized practice as a medical esthetician in California.

g. [Lori B.] Medical Esthetician . . . has over 13 years experience in the medical aesthetic industry, . . . She specializes in microdermabrasions. TCS, Jessner's peel, glycolic and salicylic acid peels, . . ." In fact, there is no recognized practice as a medical esthetician in California. Superficial peels typically use alphahydroxy acids (AHA) like glycolic acid or salicylic acid to remove the epidermis, or uppermost layer of skin. Medium-depth peels penetrate deeper, through the epidermis and into the dermis, or middle layer of skin. Trichloroacetic acid, or TCA, is commonly used to perform medium depth peels. Some other skin peel solutions, such as the Jessner solution, can be layered on to achieve a mild, medium-depth or deep peel. Recovery time for mild and medium-depth peels ranges from 24 hours to two weeks. Any peel that penetrates below the uppermost layer of skin must be performed by a physician, or by a registered nurse under supervision by a physician.

38. Since April 29, 2013, Timeless Age-Defying Laser Clinic advertised on its website the following statements:

a. "After discussing your skin care concerns, our highly qualified registered nurses will customize a treatment plan to meet your needs." This is directly contrary to the Timeless Age-Defying Laser Clinic policies and procedures as set forth in paragraphs 35 through 41 below.

b. "Monthly Specials Microdermabrasion & Glycolic Peel $115 A deep exfoliation to improve scarring, discoloration, and fine lines. (reg $155) FREE Chemical Peel with IPL Photofacial Eliminate brown spots and redness while improving skin texture. ($150 savings) Juvederm XC Sryinge [sic] $425 Fill in your laugh lines, add volume under your eyes or plump up your lips in minutes. (reg $500)"

39. On June 29, 2012, in response to the Board's investigation into her nursing practices, Respondent faxed to the Board a series of documents purporting to be Timeless Age-Defying Laser Clinic's standardized procedures and protocols. None of the Timeless Age-Defying Laser Clinic's "Standardized Procedures and Protocols" is dated or signed, including:

- "Standardized Procedures and Protocols for Administration of Restylane by a Registered Nurse;"
- "Standardized Procedure and Protocol for Laser Hair Removal Treatment by a Registered Nurse;"
- "Standardized Procedure and Protocol for Laser Vein Removal Treatment by a Registered Nurse;"
- "Standardized Procedure and Protocol for Intense Pulsed Light (IPL) Therapy by a Registered Nurse;"
- "Standardized Procedure and Protocol for Administration of Botox Cosmetic by a Registered Nurse;"
- "Standardized Procedure and Protocol for Administration of Juvederm by a Registered Nurse."

40. Under the terms of the Timeless Age-Defying Laser Clinic's "Standardized Procedures and Protocols for Administration of Restylane by a Registered Nurse," the "Medical

Director will do the initial assessment and consultation of a patient who is receiving Restylane for the first time at TIMELESS Age-Defying Laser Clinic."

41. Under the terms of the "Standardized Procedure and Protocol for Laser Hair Removal Treatment by a Registered Nurse," the "Medical Director will do the initial assessment and consultation of a patient who is receiving laser hair removal for the first time at TIMELSS [sic] Age-Defying Laser Cinic."

42. Under the terms of the "Standardized Procedure and Protocol for Laser Vein Removal Treatment by a Registered Nurse," the "Medical Director will do the initial assessment and consultation of a patient who is receiving laser vein removal for the first time at TIMELSS [sic] Age-Defying Laser Clinic."

43. Under the terms of the "Standardized Procedure and Protocol for Intense Pulsed Light (IPL) Therapy by a Registered Nurse," the Medical Director will do the initial assessment and consultation of a patient who is receiving IPL Therapy for the first time at TIMELSS [sic] Age-Defying Laser Clinic."

44. Under the terms of the "Standardized Procedure and Protocol for Administration of Botox Cosmetic by a Registered Nurse," the "Medical Director will do the initial assessment and consultation of a patient who is receiving Botox for the first time at TIMELSS [sic] Age-Defying Laser Clinic."

45. Under the terms of the "Standardized Procedure and Protocol for Administration of Juvederm by a Registered Nurse," the "Medical Director will do the initial assessment and consultation of a patient who is receiving Juvederm for the first time at TIMELSS [sic] Age-Defying Laser Clinic."

46. On or about June 20, 2012, the Board's investigator inverviewed Daniel H., M.D. Dr. Daniel H., is licensed by the California Medical Board. Dr. Daniel H. advised the Board's investigator that he was the Medical Director for Timeless Age-Defying Laser Clinic, but had no ownership interest in Timeless Age-Defying Laser Clinic. During that interview, Dr. Daniel H. also stated to the Board's investigator that he helped develop the policies and procedures for the Timeless Age-Defying Laser Clinic, he conducted on-site chart reviews at the clinic once a week,

and he does not perform examinations of clinic's patients unless he is needed for "uncommon situations."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Aiding and Abetting the Illegal Ownership of a Professional Corporation)

47. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2761, subdivision (a), and 2776, for her co-ownership of a professional corporation with an unlicensed person in violation of Code sections 2775 and 2779, and Corporation Code section 13401.5 as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Aiding and Abetting the Unlicensed Practice of Medicine and the Unlicensed Practice of Medicine)

48. Respondent is subject to disciplinary action under Code section 2761, subsections (a), and (i), in that by prescribing and administering Botox, Restylane, and Juvederm, dangerous drugs as defined in Code section 4022, by injecting cosmetic fillers, saline solution, and vitamins B12 into patients, by using lasers or intense pulse light devices to remove hair, spider veins, and skin, and by using chemical peels to remove skin below the epidermis, by and through her professional corporation, she engaged in the unlicensed practice of medicine and aided and abetted the unlicensed practice of medicine by treating patients without proper direction by a physician, and without prescriptions for the dangerous drugs injected, in violation of Code section 2052, as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – False Advertising)

49. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2761, subdivision (a)(3), for false advertising in violation of Code section 17500, as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Unlawful Name by a Professional Corporation)

50. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2776 for her failure to use the words "nursing" and/or "registered nursing" in the name of her professional corporation, in violation of section 2778 as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Illegal Profit-sharing with an Unlicensed Person)

51. Respondent is subject to disciplinary action for unprofessional conduct under Code section 2761, subdivision (a), and 2776, for sharing profits from a professional corporation with an unlicensed person in violation of Code section 2780 as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Statutes and Regulations)

52. Respondent is subject to disciplinary action under Code section 2761, subdivision (d) in that by prescribing and administering Botox, Restylane, and Juvederm, dangerous drugs as defined in Code section 4022, and by injecting cosmetic fillers, saline solution, and vitamins B12 into patients by and through her professional corporation, she violated the provisions of Code sections 2725, and 2725.1, and Regulations, sections 1471, 1472 and 1474, because the "standardized procedures" established by her and Dr. Daniel H., were not provided to patients in a health facility, clinic, or organized health care system allowing for their use, as set forth in paragraphs 34 to 46, which are incorporated here by this reference.

PRAYER

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

1. Revoking or suspending Registered Nurse License Number 622149 issued to Michelle Renee Naughton, also known as Michelle Renee Brown;

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2. Ordering Michelle Renee Naughton, also known as Michelle Renee Brown, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: JUNE 1, 2013

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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