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BEFORE THE
STATE BOARD OF BARBERING AND COSMETOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARIANN H. GRASELA, dba** **MARIANN'S SKIN CARE** **1330 Orange Avenue, #240** **Coronado, CA 92118** **Establishment License No. A 249937** **Esthetician License No. Z 17914** Respondent.	Case No. BC 2011-1398 **ACCUSATION**

Complainant alleges:

PARTIES

1. Complainant Kristy D. Underwood brings this Accusation solely in her official capacity as the Executive Officer of the State Board of Barbering and Cosmetology (Board), Department of Consumer Affairs.

2. On August 7, 2007, the Board issued Establishment License Number A 249937 to Respondent Mariann H. Grasela, dba Mariann's Skin Care. The Establishment License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

3. On December 29, 1994, the Board issued Esthetician License Z 17914 to Respondent. The Esthetician License was in full force and effect until December 31, 2008, when it expired.

On April 30, 2010, Respondent's Esthetician License was renewed by the Board, and it will expire on December 31, 2012, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

3. Section 7317 of the Code states:

> Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which barbering, cosmetology, or electrolysis is practiced unless licensed under this chapter. Persons licensed under this chapter shall limit their practice and services rendered to the public to only those areas for which they are licensed. Any violation of this section is subject to an administrative fine and may be subject to a misdemeanor.

4. Section 7320.3 of the Code states, "Persons who are not licensed to perform all of the practices of a cosmetologist may not represent themselves as a cosmetologist."

5. Section 7348 of the Code states, "An establishment shall at all times be in the charge of a person licensed pursuant to this chapter except an apprentice."

6. Section 7349 of the Code states in pertinent part, "It is unlawful for any person, firm, or corporation to hire, employ, or allow to be employed, or permit to work, in or about an establishment, any person who performs or practices any occupation regulated under this chapter and is not duly licensed by the bureau, ..."

7. Section 7403(a) of the Code provides, in pertinent part, that the Board may revoke, suspend or deny at any time any license required by the Barbering and Cosmetology Act (Bus. & Prof. Code, § 7301, et seq.) on any of the grounds for disciplinary action provided in Article 11.

8. Section 7404 of the Code states, in pertinent part:

The grounds for disciplinary action are as follows:

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

(1) Incompetence or gross negligence, including failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology or disregard for the health and safety of patrons.

...

(3) Conviction of any crime substantially related to the qualifications, functions, or duties of the licenseholder, in which case, the records of conviction or a certified copy shall be conclusive evidence thereof.

(b) Failure to comply with the requirements of this chapter.

(c) Failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Health Services, for the regulation of establishments, or any practice licensed and regulated under this chapter.

(d) Failure to comply with the rules adopted by the board for the regulation of establishments, or any practice licensed and regulated under this chapter.

(m) Any action or conduct which would have warranted the denial of a license.

...

9. Section 7405 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

10. California Code of Regulations, title 16 (CCR), section 904, states in pertinent part:

...

(b) The holder or holders of an establishment license or a mobile unit license, and the person in charge of any such establishment or mobile unit, shall be responsible for implementing and maintaining the Health and Safety Rules in such establishment or mobile unit individually and jointly with all persons in or employed by or working in or on the premises of such establishment or mobile unit.

(c) All licensed barbers, cosmetologists, estheticians, manicurists, or electrologists, instructors, or apprentices shall be held individually responsible for implementation and maintenance of the Health and Safety Rules.

...

11. CCR, section 991, states in pertinent part:

(a) No licensee may perform any act which affects the structure or function of living tissue of the face or body. Any such act shall be considered an invasive procedure.

(b) Invasive procedures include, but are not limited to, the following:

...

(2) Application of topical lotions, creams, or other substances which affect living tissue.

(3) Penetration of the skin by metal needles, except electrolysis needles.

...

12. CCR, section 993, subdivision (b), states, "No establishment or school shall have on the premises any needle-like instrument which is used for the purpose of extracting skin blemishes and other similar procedures."

COST RECOVERY

13. Section 7403(e) of the Code provides that, in any case in which the administrative law judge recommends that the Board revoke, suspend or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation. For purposes of this section, costs include charges by the Board for investigating the case and charges incurred by the Office of the Attorney General.

DRUGS

14. Code section 4022 states as follows:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ,II "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully

dispensed only on prescription or furnished pursuant to Section 4006.

15. Lidocaine is a common local anesthetic and antiarrhythmic drug used topically to relieve itching, burning and pain from skin inflammations, injected as a dental anesthetic, and in minor surgery. It is a prescription medication as defined in Code section 4022.

16. Marcaine (aka Marcain or Bupivacaine) are medications administered by epidural injection before total hip arthroplasty and are chemically related to Lidocaine. They are dangerous drugs and prescription medications as defined in Code section 4022.

FACTS

17. Respondent is the owner and sole proprietor of Mariann's Skin Care (Mariann's), a licensed cosmetology establishment located in the City of Coronado, California, which provides its clients with permanent make-up and skin care treatments. In addition to being a Licensed Esthetician from December 29, 1994, though December 31, 2008, Respondent was a Registered Nurse licensed by the California Board of Registered Nursing (BRN) from August 31, 1977, until she surrendered her RN license on November 18, 2011, while on probation from the BRN, as detailed in the August 4, 2011 Decision and Order, a true copy of which is attached hereto as Exhibit A.

18. In response to a May 17, 2007 consumer complaint, the Board inspected Mariann's on July 11, 2007, where its inspector found items consistent with medical services being performed there, such as needles, a Lam Probe and Lidocaine. During this inspection, Respondent admitted to the Board's inspector that she was a Registered Nurse, and further stated that she worked with Dr. M. J., a physician whose offices are also located in Coronado, in providing cosmetic services to her clients. Respondent also admitted that she used Lidocaine as a topical anesthesia for applying permanent eye make-up to her clients.

19. On September 12, 2008, a BRN investigator met with Respondent at Mariann's. When shown a pamphlet she used to advertise her business, which stated Respondent uses only single-service disposable needles at Mariann's, Respondent explained that these were small, probe needles placed into the end of the leads of the Lam Probe machine and then inserted into the skin to inject the coloring used in permanent make-up. When asked to explain the presence of

the Lidocaine, Respondent stated that she applied it to the surface of the skin just before tattooing on permanent eyeliner. Respondent also stated that though she had earlier obtained the needles from Dr. M.J., and she was now obtaining them from a Dr. P.Y. However, both of these physicians denied working with Respondent in any capacity and denied providing needles to Respondent.

20. On March 18, 2009, at Mariann's, Respondent provided a facial consultation and eyebrow shaping on BRN undercover investigator B. L., and during this procedure told her she could inject her with Lidocaine to eliminate pain if B.L. chose to have permanent makeup applied to her eyebrows. On April 30, 2009, when B.L returned to Mariann's to have permanent eye make-up applied, Respondent prepared to inject a syringe of prescription-strength Lidocaine into B.L.'s skin. Also present at Mariann's were prescription-grade Lidocaine products, including Marcaine, all of which were expired and thus unsafe to administer. Respondent was arrested, issued Citation No. D21306 for violation of Code section 2052 – Unlicensed Practice of Medicine, and Code section 7317 – Unlicensed Practice of Cosmetology, and released based upon her written promise to appear in court.

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Criminal Conviction)

21. Respondent has subjected her licenses to disciplinary action under sections 7404, subdivision (a)(3), and 7405 of the Code in that she was convicted of a crime substantially related to the qualifications, functions, and duties of an establishment licensee and licensed esthetician. The circumstances are as follows:

a. On June 19, 2009, in a criminal proceeding entitled *People of the State of California v. Marianna H. Sutton, aka Mariann Helen Grasela*, in San Diego Superior Court, case number S229953, Respondent was charged with violating Code sections 2052, 7317 and 7350. As a result of a plea-bargain, on August 18, 2009, Respondent pled guilty to violating Code section 7317 (practicing barbering, cosmetology, and electrolysis without a valid, unexpired license and in an unlicensed establishment), a misdemeanor, and the other charges were dismissed.

b. As a result of the conviction, on August 18, 2009, Respondent was sentenced to eighteen months summary probation, 30 days public service, to pay a $100 fine, and to obey all laws. Because Respondent failed to register for public service, on October 5, 2009 the court issued a $5,000 bench warrant for her. On March 16, 2010, however, Respondent appeared in court and admitted her violation of probation, and the court converted her 30 days public service to 240 hours of volunteer work to be completed by November 1, 2010, and recalled the warrant.

c. The facts that led to the conviction are detailed in paragraphs 14 through 20.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Incompetence or Gross Negligence)

22. Respondent has subjected her licenses to disciplinary action for unprofessional conduct under Code section 7404, subsection (a)(1) in that she was incompetent or grossly negligent in carrying out the usual functions of an establishment licensee and licensed esthetician when she dispensed or furnished Lidocaine, a dangerous drug as defined in Code section 4022, by injection to patients and treated patients with those drugs without a physician's order, as detailed in paragraphs 14 through 20.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conduct Warranting Denial of a License)

23. Respondent has subjected her licenses to disciplinary action under Code section 7404, subsection (m) in that she engaged in action or conduct which would have warranted the denial of a license when she dispensed or furnished Lidocaine, a dangerous drug as defined in Code section 4022, by injection to patients and treated patients with those drugs without a physician's order, as detailed in paragraphs 14 through 20.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Governing Statutes)

24. Respondent has subjected her licenses to disciplinary action for unprofessional conduct under Code section 7404, subsection (b), in that she failed to comply with the requirements of Chapter 10, Division 3, of the Code in carrying out the usual functions of an

establishment licensee and licensed esthetician as detailed in paragraphs 14 through 20 as follows:

a. By engaging in the practice of cosmetology without a valid, unexpired license, in violation of Code section 7317;

b. By representing herself as a cosmetologist when she was not currently licensed as a cosmetologist, in violation of Code section 7320.3;

c. By maintaining an establishment licensed to offer cosmetology services when she was not currently licensed as a cosmetologist, in violation of Code section 7348; and

d. By employing herself in her licensed establishment when she was not currently licensed as a cosmetologist, in violation of Code section 7349.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Governing Rules and Regulations)

25. Respondent has subjected her licenses to disciplinary action under Code section 7404, subsections (c) and (d), and CCR section 904, in that she failed to comply with the Board's health and safety rules and regulations governing cosmetology establishments in carrying out the usual functions of an establishment licensee and licensed esthetician as detailed in paragraphs 14 through 20 as follows:

a. By performing invasive procedures, in violation of CCR section 991; and

b. By having on her licensed premises needles and needle-like instruments used for the purpose of extracting skin blemishes and other similar procedures, in violation of CCR section 993, subdivision (b).

DISCIPLINE CONSIDERATIONS

26. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on August 4, 2011, in a prior disciplinary action entitled In the Matter of the Accusation Against Mariann H. Grasela before the Board of Registered Nursing, in Case Number 2011-275, Respondent's registered nurse license was disciplined as detailed in the Decision and Order of that date, effective September 2, 2011, a true copy of which is attached

hereto as Exhibit A. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Establishment License Number A 249937, issued to Mariann H. Grasela, dba Mariann's Skin Care; and Esthetician License Number Z 19714 issued to Mariann H. Grasela;

2. Ordering Respondent Marianne H. Grasela to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 7403; and

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

DATED: MARCH 15, 2012

KRISTY D. UNDERWOOD
Executive Officer
State Board of Barbering and Cosmetology
Department of Consumer Affairs
State of California
Complainant

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