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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ANABELLE LOBENARIA SIA
3133 Sugarbeet Way
Union City, CA 94587

Vocational Nurse License No.
VN 210189

Respondent.

Case No. 4302017001471

OAH No. 2020040260

Precedential Decision No. 2020-01

DESIGNATION OF DECISION AS PRECEDENTIAL

Pursuant to Government Code section 11425.60, subdivision (b), the Board of Vocational Nursing and Psychiatric Technicians hereby designates the attached decision, in its entirety, as precedential.

This precedential designation shall be effective immediately.

IT IS SO ORDERED this 1st day of December 2020.

SIGNATURE ON FILE

Dr. Carel Mountain
President

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Accusation:

Case No. 4302017001471

ANABELLE LOBENARIA SIA
3133 Sugarbeet Way
Union City, CA 94587

OAH No. 2020030819

Vocational Nurse License No.
VN 210189

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on October 31, 2020.

IT IS SO ORDERED this 30th day of September 2020.

SIGNATURE ON FILE

Dr. Carel Mountain
President

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC
TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ANABELLE LOBENARIA SIA,

License No. VN 210189

Respondent.

Case No. 4302017001471

OAH No. 2020030819

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 5, 6, and 17, 2020, by videoconference.

Deputy Attorney General Joshua D. Johnson appeared on behalf of complainant Elaine Yamaguchi, Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Attorney at Law Tracy Green represented respondent Anabelle Lobenaria Sia, who was present.

The record closed and the matter was submitted for decision on August 17, 2020.

FACTUAL FINDINGS

1. Complainant Elaine Yamaguchi, Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, filed the First Amended Accusation solely in her official capacity.

At hearing, the First Amended Accusation was amended to correct an error as follows: on page 12 at line 19, the phrase "(Practicing Outside the Scope of a Vocational Nurse)" is replaced with the phrase "(False Advertising)".

2. On July 21, 2004, the Board issued Vocational Nurse License No. VN 210189 to respondent Annabelle Lobenaria Sia. The license was in full force and effect at all times relevant to the First Amended Accusation. The license will expire on September 30, 2021, unless renewed. There have been no prior disciplinary actions against her license.

Respondent is licensed by the Board of Barbering and Cosmetology as an esthetician. She has been licensed since October 2013.

Respondent has never been licensed by the Board of Registered Nursing or by the Medical Board of California.

3. The Board seeks to discipline respondent's license based on her conduct in relation to her operation and performance of treatments at a skin care salon and related medical spa. It is alleged that respondent performed tasks outside the scope of practice of a licensed vocational nurse; engaged in unprofessional, incompetent and

grossly negligent conduct; was dishonest and misrepresented her license status; unlawfully obtained and administered medications without patient-specific prescriptions; engaged in false advertising; and unlawfully engaged in the practice of medicine and the operation of a medical practice without a medical license.

Respondent's Skin Care Businesses

4. Respondent became interested in providing skin care services. She completed a 600-hour program at Fremont Beauty College in 2013 and received her esthetician license. She took extra courses in microcurrent, dermaplaning, and LED light therapy. Initially, respondent provided services to "friends and family" as she perfected her skills. She rented a room from a dentist to perform these procedures. She trained in body art techniques such as micropigmentation, microblading, and permanent makeup, and became registered to perform body art in Alameda County in 2016.

AMAZING SKIN BY A-SIA (SALON)

5. In 2015 to 2016, respondent expanded her business. She called her business Amazing Skin by A-Sia, LLC. She received an establishment license from the Board of Barbering and Cosmetology and leased a space in Union City to operate as a skin care salon. She created a website to promote her business, which she owned together with her husband, Joseph Sia, an accountant.

At the salon, respondent offered esthetician services, including facials and chemical peels. She performed microdermabrasion, electrocautery, microneedling, and radiofrequency treatments, using equipment for esthetician use which she purchased at a trade show for estheticians. Other estheticians also worked at the salon.

AMAZING SKIN & WELLNESS CENTRE (MEDICAL SPA)

6. Respondent's salon was successful, and she became interested in expanding her offerings by opening a medical spa to provide additional cosmetic procedures, such as cosmetic injections, under physician supervision. At first, she planned to own the business and hire a physician to provide supervision of herself and other nurses working there. She discovered from the Medical Board of California that a vocational nurse is not allowed to be a shareholder in a medical corporation. She learned that medical corporations must be at least 51% owned by licensed physicians, and that only certain licensed professionals can be shareholders. A licensed vocational nurse is not allowed to be a shareholder, officer, or director in a medical corporation; a licensed registered nurse is. Respondent decided to work around these restrictions by forming a business with a physician as majority owner, and her sister-in-law, Anamarie Vitente (a registered nurse), as the sole minority owner.

Respondent arranged for a physician named Jeffrey Watson, Jr., to open and operate a medical spa beginning in February 2017. The medical spa leased a room at respondent's skin care salon and did business as Skin Fabulous. Dr. Watson ordered injectable cosmetic medications to be delivered to the shared facility. These drugs were administered to clients. Dr. Watson's involvement ended in October 2017.

7. Respondent then became acquainted with a physician named Abdelsalam Mogasbe, M.D., who agreed to provide physician services and become an officer of the medical spa. The Amazing Skin & Wellness Centre medical spa opened in late 2017. They decided to do business as Amazing Skin & Wellness Centre because respondent had an established clientele at her salon, Amazing Skin by A-Sia, and she wanted to build on her reputation.

A medical corporation called Dermasuave was formed to operate the Amazing Skin & Wellness Centre medical spa. Respondent's husband drafted incorporation documents and bylaws using forms from an online legal services company called LegalZoom. Dr. Mogasbe was identified as 51% shareholder in Dermasuave, with Anamarie Vitente as 49% shareholder. Respondent is listed as the president, her husband Joseph Sia as the chief financial officer, and Vitente as the secretary of the corporation.

An agreement entered into by Dr. Mogasbe, Vitente, respondent, and her husband provided that respondent and her husband would provide "100% financial investment into the business in exchange for 100% allocation of Net Income or Net Loss to be reported on their personal tax returns. To make such arrangements possible All parties agreed, solely for tax purpose to allow Annabelle to be a shareholder but required her to waive all legal rights over ownership" of the Dermasuave medical corporation. Respondent used the proceeds of her salon as a loan to provide operating expenses and purchase equipment for the medical spa. Dr. Mogasbe, respondent, respondent's husband, Vitente, and another registered nurse were paid as employees of the medical spa.

A Statement of Information filed with the Secretary of State in January 2018 identifies respondent as the "Chief Executive Officer" of the Dermasuave Corporation. A Statement of Information filed in January 2019 reflects that there has been no change in any information since the previous Statement of Information was filed.

8. The Amazing Skin & Wellness Centre expanded into the suite adjacent to the Amazing Skin by A-Sia salon, which continued to operate. The Amazing Skin by A-Sia salon and the Amazing Skin & Wellness Centre medical spa were operated as separate entities in some regards: they maintained separate financial records and

maintained separate liability insurance coverage. In other regards, there was not much distinction between the two entities: they shared a waiting area and receptionist, shared a phone number and website, and shared a Yelp account. The logos of both entities appeared on some patient forms, including client consultation forms and waiver and release of liability forms.

In September 2019, a document was filed with the Secretary of State changing the name of the corporation from Dermasuave to A3 Aesthetic Medical Spa Inc. Respondent signed this form as president of the corporation.

Respondent Performs Injections and Other Procedures

9. As part of respondent's plan to expand her offerings and open a medical spa, respondent and Vitente sought training in cosmetic injection procedures. In 2015, they took classes in Botox¹ injections and in injections of Juvederm² dermal fillers. The course administrators required credentialing for students to enroll and accepted respondent's credentials as a vocational nurse. Respondent stated that she was

¹ Botox is a tradename for botulinum toxin A. It is administered by injection to reduce facial wrinkles, in addition to non-cosmetic uses. It is a dangerous drug within the meaning of Business and Professions Code section 4022. Dysport is another tradename for botulinum toxin A.

² Juvederm is a tradename for hyaluronate acid. It is injected into the face to smooth out wrinkles and into the lips for lip augmentation. It is a dangerous drug within the meaning of Business and Professions Code section 4022. Restylane is another tradename for hyaluronate acid.

unaware when she took these courses that the Board views injection of Botox and dermal fillers as outside the scope of practice of a licensed vocational nurse.

Respondent believed that a licensed vocational nurse would be permitted to perform injections under supervision of a physician. As discussed more below, this belief was false.

Respondent was acquainted with a dentist, Apolinar (Paul) Relos, D.D.S., who practices in San Francisco. Dr. Relos approached respondent and expressed an interest in receiving Botox injection treatments. For approximately two years, Dr. Relos ordered Botox, Juvederm dermal fillers, and Kybella³ from the manufacturer, indicating that he was the medical director of "Amazing Skin." The products were shipped to respondent's salon. Dr. Relos is licensed by the Dental Board of California, but he does not hold an Elective Facial Cosmetic Surgery Permit. Accordingly, he is not authorized to administer or supervise the administration of Botox or Juvederm, and his acquisition of these products for this purpose was not lawful.

Respondent and Vitente administered Botox to Dr. Relos. Respondent and Vitente used the remaining Botox product to "practice" with on each other.

After the medical spa opened, respondent worked there as a licensed vocational nurse. She performed Botox and other injections on patients from 2018 until she received the accusation in June 2019. She would consult with Dr. Mogasbe prior to administering cosmetic injections. He would assess the patient, either in person or

³ Kybella is the tradename for deoxycholic acid. It is injected into the fat beneath the chin. It is a dangerous drug pursuant to Business and Professions Code section 4022.

over the telephone, and consent for her to perform the injections pursuant to protocols he and Vitente developed for each procedure. Respondent incorrectly believed that she could perform cosmetic injections such as Botox and Juvederm, as long as there was this level of physician supervision.

Platelet rich plasma⁴ treatment was offered at the medical spa. Respondent performed this treatment on Vitente “for practice.” At the time she performed the treatment, she was not certified by the Board to perform blood withdrawal.

Respondent performed skin growth removal procedures at both the salon and the medical spa.

Respondent performed intravenous vitamin drip treatments, even though at the time she was not certified by the Board to perform intravenous therapy.

Consumer Complaint and Investigation

10. In November and December 2016, a client who will be referred to by her initials, “I.V.,” to protect her privacy, submitted complaints to both the Board of Registered Nursing and the Board of Barbering and Cosmetology regarding treatment she received by respondent at respondent’s facility. I.V. stated that respondent identified herself as a registered nurse. Respondent treated I.V. with a glutathione⁵

⁴ Platelet rich plasma treatment involves withdrawing a patient’s blood, separating the plasma, and reinjecting it.

⁵ Glutathione is an antioxidant found in plants, animals, and other organisms. It can be purchased over the counter for use as a supplement taken orally or administered topically. If it is to be injected, it is only available by prescription and is

injection on October 28, 2016, at the Amazing Skin by A-Sia salon. I.V. reported that during the injection she felt weird and tasted something in her mouth. Afterward, she felt severe dizziness and headaches. Respondent also offered to treat her with Botox. I.V. researched respondent and discovered that she is not a registered nurse.

The complaints were forwarded to the Department of Consumer Affairs, Division of Investigation. Investigator Karen West performed an investigation on behalf of the Board. She authored two reports and testified at the hearing. She was a credible witness.

AMAZING SKIN BY A-SIA WEBSITE, OCTOBER 2017

11. West conducted an internet search on October 27, 2017. She located a website for Amazing Skin by A-Sia. The website promoted the following services: 3D eyebrow microblading; chemical and herbal peels; collagen induction therapy; microdermabrasion; microcurrent treatment; and skin growth removal. These treatments all fall outside the scope of practice of a licensed vocational nurse.

UNDERCOVER VISIT #1- DECEMBER 5, 2017

12. On December 1, 2017, West sent an email requesting a consultation appointment through the Amazing Skin by A-Sia website. She was later contacted by an individual named "Olga" and arranged an appointment. West met with Olga at the Amazing Skin facility in Union City on December 5, 2017. Olga identified herself as an esthetician. Olga offered facial services to West, and stated that she could not provide

considered a dangerous drug pursuant to Business and Professions Code section 4022. It is injected with the intent of whitening the skin.

Botox injections because she is not a nurse. She informed West that Botox injections were performed by respondent or Vitente, and that they are both nurses. Olga did not specify that respondent is a vocational nurse. West was given informational pamphlets regarding various treatments, including pamphlets for Botox and Juvederm injections.

AMAZING SKIN & WELLNESS CENTRE WEBSITE, MARCH 13, 2018

13. West performed another internet search on March 13, 2018. At this time she found a website for Amazing Skin & Wellness Centre. The website featured a biography of respondent, which identified her as a "Medical Nurse Aesthetician" and stated that she passed the "Nursing board exam" in 2004 and had worked as a nurse at Kaiser Permanente and the Veterans Administration (VA). The website stated that respondent "owns and operates the 'Amazing Skin by A-Sia, LLC' and expanded to a medical spa." No other practitioner or owner was identified on the website. The Dermasuave corporation was not identified on the website as the owner of the medical spa.

The following procedures were promoted on the website: Botox injections; dermaplaning; facial fillers; fat freezing; Kybella injections; laser hair reduction; microchanneling; microneedling; radiofrequency and ultrasonic cavitation; Juvederm injections; platelet rich plasma treatments; and vitamin drip. These treatments all fall outside the scope of practice of a licensed vocational nurse.

UNDERCOVER VISIT #2 – DECEMBER 12, 2018

14. West returned to the facility on December 12, 2018, for another consultation. She observed a sign for "Amazing Skin & Wellness Centre Medical Spa" on the wall in the reception area. She was taken to a treatment room. She met with respondent, who was wearing a white coat with the embroidered title "Medical

Aesthetic Nurse” on it. West inquired about treatments to reduce the lines in her forehead. Respondent recommended Botox or Dysport injections, and provided West with pamphlets for the products.

Respondent described the pros and cons of each product and showed West before and after photos of clients she had treated. Respondent advised West that she could schedule an appointment for injection with any of the three nurses working there, including respondent. She told her that there would be a consultation with a doctor before the injections, either in person or by Facetime. She provided a consent form and a post-treatment instruction sheet.

AMAZING SKIN BY A-SIA WEBSITE, DECEMBER 2018

15. West performed another internet search in December 2018. She found a website for Amazing Skin by A-Sia. The website identified respondent as the founder and as a “Medical Aesthetic Nurse.” The treatments promoted on the website included: Botox, Dysport, Juvederm, Kybella, platelet rich plasma, and skin growth removal. No physician was identified on the website.

YELP REVIEWS

16. West did an internet search of Yelp reviews for Amazing Skin & Wellness Centre on December 12, 2018. Consumer queries were answered by “Anabelle S., Business Owner.” Several consumers noted that respondent is a nurse, including three consumers (Sarah K., Ariana G., and Roselle L.) who wrote in their reviews that respondent is a registered nurse. Three consumers attested to respondent removing a skin tag.

Board of Barbering and Cosmetology Scope of Practice

17. According to the declaration of Allison Lee of the Board of Barbering and Cosmetology, the following procedures are outside the scope of practice of a licensed esthetician: Botox, glutathione, and other injections; collagen induction therapy; skin growth removal; and radiofrequency facials.

Board's Expert

18. Suellen Clayworth, R.N., M.N., is the Board's Nursing Education Consultant. She reviewed the investigation report, authored a report, and testified at hearing. Clayworth has 20 years of experience researching issues relating to the scope of practice of licensed vocational nurses. Her testimony was persuasive and un rebutted.

19. Clayworth explained that both vocational nurses and registered nurses are permitted to use the title "nurse." However, "Medical Aesthetic Nurse" and "Medical Nurse Aesthetician" are not recognized titles and should not be used. If a vocational nurse identifies herself as a registered nurse, this reflects dishonesty and misrepresentation of one's professional credentials.

20. Clayworth explained that licensed vocational nurses are expected to know their scope of practice. Scope of practice is taught in nursing school. Licensees can consult the Board for clarification. Clayworth explained that many of the cosmetic procedures offered at respondent's salon and medical spa are treatments that are beyond the scope of a licensed vocational nurse. A licensed vocational nurse may not administer Botox, Juvederm dermal fillers, or Kybella, even under physician supervision. A licensed vocational nurse lacks the knowledge of anatomical structures and lacks the assessment skills needed to properly administer these injections.

Improper injection of Botox can cause dangerous side effects including facial muscle paralysis which can spread. Improper injection of Juvederm into a blood vessel can cause serious injury. The placement and dose of the products are determined as the procedure takes place. Outside trainings by vendors in the use of these products does not expand the scope of practice of a licensed vocational nurse.

Clayworth acknowledged that there is no written explicit prohibition on performing cosmetic injections under physician supervision in the statutes or regulations governing the practice of vocational nursing. The Business and Professions Code only sets forth the scope of practice in general terms. The Board's approach is to assess queries from practitioners on a case by case basis, assessing the knowledge base and level of assessment skill required in a particular situation.

Clayworth also acknowledged that there has been confusing information published stating that vocational nurses are able to perform cosmetic injections under physician supervision. The Medical Board of California previously advised its licensees on its website and in published newsletters that they could supervise both registered nurses and vocational nurses in administering injections. Clayworth noted that the Medical Board does not have the authority to define the scope of practice of licensed vocational nurses. The Medical Board has removed the information from its website, at the request of the Board.

21. Clayworth explained that a vocational nurse may perform platelet rich plasma treatment, but only if he or she is Board-certified in blood withdrawal, and is acting under the supervision of a physician or registered nurse pursuant to a patient-specific physician's order for the procedure. Respondent's business offered this procedure at a time when respondent did not hold this certification.

Similarly, a licensed vocational nurse may perform intravenous treatments such as vitamin drips only if he or she is Board-certified in intravenous therapy. Vocational nurses may only administer intravenous medication through a drip; they may not inject medication directly into the vein.

Clayworth opined that respondent operated outside the scope of practice in her treatment of client I.V. Client I.V. reported that respondent injected her directly with glutathione, which was not physician-ordered; administration of drugs without medical supervision is outside the scope of practice of a vocational nurse. The client reported “tasting” something in her mouth; this suggests that the drug was administered intravenously into the vein. This fell outside the scope of practice for a vocational nurse.

22. Microneedling (also known as collagen induction therapy), microchanneling, dermaplaning, microblading, laser hair removal, and skin growth removal procedures all fall outside the scope of practice for a vocational nurse. Clayworth opined that even if respondent was authorized to perform these procedures because of her esthetician license and/or body art registration, by holding herself out as a nurse to consumers, she was acting as a vocational nurse, and the scope of practice of a licensed vocational nurse would apply to her actions. By highlighting her status as a nurse on the website and when interacting with consumers, respondent was implying to consumers that she was using her license and functioning as a nurse.

23. Clayworth explained that skin growth removal is a surgical procedure and is outside the scope of practice of a vocational nurse. It requires assessment skills beyond those of a vocational nurse to assess whether it is safe to remove the growth. Clayworth opined that respondent’s performing of skin growth removal constitutes practicing medicine without a license.

24. Ultimately, Clayworth concluded that respondent's performance of numerous procedures that are outside the scope of practice constituted unprofessional conduct, incompetence, and gross negligence.

Respondent's Evidence

BACKGROUND, EDUCATION AND WORK HISTORY

25. Respondent was born and educated in the Philippines. She had a difficult upbringing, and was driven to succeed. She received a bachelor of science degree in psychology from University of the East (Manila) in 1999, while she supported herself by working at a fast food restaurant.

Respondent immigrated to the United States with her husband in 2000. She and her husband have a son who is 20 years old.

26. Respondent became a certified nursing assistant in 2002, and was hired to work at Kaiser Permanente in San Leandro. She studied vocational nursing at NCP Vocational School and was awarded the Salutatorian Award for her outstanding performance. She stayed on at Kaiser Permanente as a vocational nurse for several months, administering medications, including injections. She then went to work at a geriatric acute locked psychiatric facility for approximately six months, where her duties also included injecting medications.

27. Respondent worked as a vocational nurse at a VA facility in Menlo Park for approximately 13 years. She worked in a unit for veterans with Post Traumatic Stress Disorder. She performed injections, such as flu shots, immunizations, insulin, and other medications, under the direction of a physician, physician assistant, or nurse practitioner. Respondent's three most recent performance evaluations establish that

she performed at the fully successful or exceptional level in all areas. Respondent found it very rewarding working with veterans.

Respondent reduced her hours to part time to devote more time to her skin care business. In 2018, she reduced her hours to three days per week. Respondent resigned from the VA in December 2019. She wanted to focus on her skin care business and on defending herself against this accusation.

28. Respondent began an accelerated registered nursing program in 2019. After receiving the accusation, she decided to put this endeavor on hold. She hopes to be able to resume her studies and become licensed as a registered nurse. She would love to be able to resume performing cosmetic injections.

RESPONDENT'S EXPLANATIONS REGARDING THE ALLEGATIONS

29. Respondent admitted to most of the allegations, although she was hesitant in her testimony and somewhat reluctant to accept responsibility for her actions. In a letter to the Board, she described her conduct as "honest mistakes." At hearing, respondent expressed remorse and apologized for doing inadequate research and not consulting with the Board regarding the scope of practice. She testified that she believed she could perform cosmetic injections, because she regularly performed a variety of other injections while working as a vocational nurse. Respondent also acknowledged that she made mistakes in her role in the medical corporation, and she regrets not consulting an attorney.

Respondent acknowledged administering glutathione to client I.V. in 2016. Respondent purchased this product online for her own use. She did not advertise this product on her website at the time. Respondent stated that this was the only patient she performed this procedure on. She initially testified that she did not realize she

could not use this product as an esthetician. Later, she acknowledged that “it was wrong” of her to perform this procedure on I.V. Respondent also stated that she did not realize she could not perform blood withdrawal or intravenous treatments without additional certification, which she now has. She admitted assisting in vitamin drip procedures, but claimed that she was only helping set up.

Respondent admitted performing skin growth removal, but stated that she only removed “spots” from the epidermis, which she has been trained to perform as an esthetician. She denied using a scalpel to perform these procedures.

Respondent insisted that she performed chemical peels, microdermabrasion, electrocautery, microneedling, and radiofrequency procedures only on the epidermal skin layer, and she asserted she only performed these tasks as permitted by her esthetician license. Respondent denied ever performing laser hair removal or fat freezing.

Respondent admitted to performing cosmetics injections on Dr. Relos, and to “practicing” on Vitente. She further admitted performing injections at the Amazing Skin & Wellness Centre medical spa, but insisted that these injections were always done after consultation with the physician, usually on the phone. The medical spa maintained a supply of these products for use on clients.

Respondent denies performing any Botox or filler injections while operating the Amazing Skin by A-Sia salon business. This testimony was not credible in light of the fact that these products were ordered by Dr. Relos over a two-year period prior to the opening of the medical spa, and in light of the declaration of client I.V., who stated that she was offered Botox treatments by respondent in 2016. Furthermore, the website for the salon continued to advertise these products in December 2018.

Respondent denied identifying herself as a registered nurse to any clients. She stated that her practice is to introduce herself to clients as a “nurse” and admitted that she did not explicitly state that she is a vocational nurse.

RESPONDENT’S ACTIONS SINCE RECEIVING THE ACCUSATION

30. Subsequent to receiving the accusation, respondent took courses in intravenous therapy and blood withdrawal. She is currently certified by the Board to perform these activities. Respondent had not been aware that she needed to be separately certified to perform these activities and apologized for not following the regulations. She has not been performing any intravenous therapy or blood withdrawal since receiving the accusation.

Subsequent to receiving the accusation, respondent enrolled and completed continuing education courses, including courses in ethics.

Respondent has allowed her body art registration to expire and she does not plan on engaging in those activities in the future. She stopped offering these services because it was not profitable due to the large number of unlicensed individuals offering these services.

At the time of the hearing, neither the Amazing Skin by A-Sia skin care salon nor the Amazing Skin & Wellness Centre medical spa had been operating since March 2020, due to the pandemic. Respondent stated that the medical spa is not planning on reopening and that the corporation would be dissolved, although this had not yet happened at the time of hearing. Respondent stated that after receiving the accusation in June 2019, she stopped providing vocational nurse services at the medical spa, but continued helping with administrative tasks such as answering phone

calls, retrieving charts, and setting up for clients. After receiving the accusation, respondent and her husband removed themselves as officers of the corporation.

Respondent intends to reopen the Amazing Skin by A-Sia salon and offering esthetician services, when reopening of this type of business is permitted by local laws.

Respondent has volunteered during the pandemic to provide meals on wheels. She has been a regular blood donor for many years. She sends clothes and toys to a children's hospital in the Philippines, where respondent's sister was treated as a child.

CHARACTER REFERENCE LETTERS

31. Respondent submitted several character reference letters:

a. M. Evelyn Hartman, R.N., M.S.N., N.P.-C, worked with respondent at the VA for 15 years. She described respondent as "disciplined and meticulous" in performing nursing tasks, "accurate and succinct" in her documentation, and valued by her teammates and patients.

b. Nelly Domingo has known respondent for 15 years and worked with her at the VA for 10 years. She described respondent as a capable and dedicated businesswoman and a person of high integrity.

c. Maria Victoria Sotio is a colleague and friend of respondent's. She wrote that respondent confided in her about the allegations in the accusation. Sotio admires respondent's hard work and dedication and urged the Board to dismiss the accusation. Sotio also disparaged the credibility of the client whose complaint triggered the investigation into respondent's conduct.

d. Amelia Syjuco, R.N., M.S.N., met respondent in 2012 during a training at the VA. They became friends, but they have not worked together in the same unit. Syjuco admires respondent's dedication, hard work, and intelligence. She was shocked when respondent told her about the Board's allegations against her. She supports respondent's continued licensure.

e. Silvia Rave has been friends with respondent for 10 years and has been a client at respondent's spa. She has referred others to respondent for cosmetics treatments. She described respondent as trustworthy, honest, ethical, and compassionate.

f. Respondent's cousin, Michael Miranda, confirmed that respondent suffered through challenging circumstances as a child in the Philippines. He admires respondent's grit and determination to defy expectations and succeed in becoming an educated professional and business owner. He related that respondent is generous to those in need and provides financial support to relatives in the Philippines.

g. Respondent's brother-in-law, Jose T. Vitente, is married to Anamarie Vitente. He is a retired licensed vocational nurse. He has helped out at respondent's salon and medical spa. He wrote that respondent became extremely depressed when she received the Board's accusation. He believes that respondent would never intentionally hurt a client. He also believes that the Board is being unreasonable to pursue discipline against respondent.

Enforcement Costs

32. In connection with the prosecution of this accusation, the Department of Justice has billed the Board \$16,583.75 for legal services performed through July 16, 2020. The Department of Consumer Affairs has billed \$17,139.50 in investigation costs

to the Board in connection with the investigation. The total of costs sought is \$33,723.25. These charges are supported by certifications that comply with the requirements of California Code of Regulations, title 1, section 1042, and are deemed to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2878 provides that the Board may suspend or revoke the license of a vocational nurse who has engaged in unprofessional conduct.

Cause for discipline was established in light of the matters set forth in Findings 4-17, 19-24, and 29, and Legal Conclusions 2 through 8, below.

2. Business and Professions Code section 2878, subdivision (a)(1), provides that the Board may suspend or revoke the license of a vocational nurse for gross negligence and/or incompetence in carrying out nursing functions. By performing procedures that fall outside the scope of practice of a licensed vocational nurse, including Botox, Juvederm, and Kybella injections, plasma rich platelet treatments, and the intravenous injection of glutathione, respondent engaged in both gross negligence and incompetence. Cause for discipline was established in light of the matters set forth in Findings 9, 10, 20, and 24.

3. Business and Professions Code section 2878, subdivision (h), provides that the Board may suspend or revoke the license of a vocational nurse who misrepresents his or her professional credentials or impersonates another practitioner. Business and Professions Code section 2878, subdivision (j), provides that the Board may suspend or revoke the license of a vocational nurse for dishonesty related to his

or her licensed duties. The evidence established that respondent falsely represented or led consumers to believe that she is a registered nurse. This conclusion is based on the statement of the complaining consumer, I.V., as corroborated by three separate Yelp reviewers who noted respondent's status as a registered nurse in their reviews. This conclusion is also based on respondent's use of the unrecognized and confusing terms "Medical Nurse Aesthetician" and "Medical Aesthetic Nurse" as well as promoting herself as a nurse in connection to the treatments provided at her salon. Cause for discipline was established in light of the matters set forth in Findings 10, 12-16, and 19.

4. Business and Professions Code sections 2878 and 2878.5 provide that the Board may suspend or revoke the license of a vocational nurse who obtains, possesses, or administers controlled substances and/or dangerous drugs without patient-specific prescriptions. Respondent unlawfully acquired Botox, Juvederm, and Kybella through Dr. Relos and unlawfully administered these drugs to Dr. Relos and Anamarie Vitente without patient-specific prescriptions. Respondent unlawfully obtained glutathione for injection and administered it to client I.V. without a prescription. Furthermore, respondent maintained a supply of these drugs at the medical spa, and the record did not establish that these drugs were administered pursuant to patient-specific prescriptions, notwithstanding her testimony that she consulted with a physician prior to administration. Cause for discipline was established in light of the matters set forth in Findings 9, 10, and 29.

5. Business and Professions Code section 2878, together with Business and Professions Code 2052 and 2400, provides that the Board may suspend or revoke the license of a vocational nurse who operates an unlicensed medical practice. The evidence established that respondent performed medical procedures — cosmetic

injections and skin growth removal — prior to and after forming the medical corporation, constituting the operation of an unlicensed medical practice. The evidence further established that respondent controlled the operation of the medical spa as a hidden shareholder, and referred to herself as either president or chief executive officer in filings with the Secretary of State. Cause for discipline was established in light of the matters set forth in Findings 6-16 and 23.

6. Business and Professions Code sections 2878, 2860, and 2052, provide that the Board may suspend or revoke the license of a vocational nurse who practices medicine without a medical license or who operates a practice offering medical services without a medical license. By performing medical services outside the scope of practice of a registered nurse at her salon and later at the medical spa she owned and operated, respondent engaged in the practice of medicine and the operation of a practice offering medical services without a medical license. Cause for discipline was established in light of the matters set forth in Findings 6-16 and 23.

7. Business and Professions Code sections 2878 and 2859, and California Code of Regulations, title 17, section 2518.5, provide that the Board may suspend or revoke the license of a vocational nurse who provides medical services beyond the scope of practice of a vocational nurse. Respondent administered Botox, Juvederm, and Kybella injections, performed platelet rich plasma therapy and vitamin drips when she was not certified, performed skin growth removal procedures, and injected glutathione, all procedures which were beyond her scope of practice. In addition, the performance of esthetician services under the imprimatur of her vocational nurse license also constituted performance of tasks outside her scope of practice. Cause for discipline was established in light of the matters set forth in Findings 4-5, 9-16, and 20-23.

8. Business and Professions Code sections 2878 and 651 provide that the Board may suspend or revoke the license of a vocational nurse for false advertising. By promoting procedures on her Amazing Skin by A-Sia website that she was not authorized to perform and representing herself as a nurse in connection to the performance of esthetician procedures, respondent engaged in false advertising. Cause for discipline was established in light of the matters set forth in Findings 11, 13, and 15.

Discussion

9. The Board has set forth factors to be considered when imposing discipline on a licensee. These factors include the nature and severity of the acts, the actual or potential harm to the public, actual or potential harm to any patient, prior disciplinary record, number and/or variety of current violations, whether the respondent complied with the terms of probation or parole, mitigation evidence, rehabilitation evidence, and the time passed since the acts occurred.

Respondent committed repeated, severe violations of the law in the operation of a skin care salon and medical spa. In her quest to operate a successful skin care business, she demonstrated a cavalier attitude towards the law. Over the period of several years, she provided cosmetic treatments that are outside the scope of her license. She unlawfully obtained and administered dangerous drugs without physician supervision. She performed medical services and owned and essentially operated a medical practice without a medical license. She engaged in false advertising and misrepresented her license status. There was evidence of harm to client I.V., and a great potential risk of harm to other consumers.

In light of the egregious nature of the violations, revocation of respondent's license is necessary, notwithstanding her prior commendable career as a vocational nurse for the VA. It would be a threat to public safety to permit respondent to retain her vocational nurse license.

10. Business and Professions Code section 125.3 authorizes the Board to recover its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. No basis for a reduction of costs was established.

ORDER

1. Vocational Nurse License Number VN 210189, issued to respondent Anabelle Lobenaria Sia, is revoked.
2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$33,723.25.

DATE: September 15, 2020

DocuSigned by:

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KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings