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7
 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10
 11 JACQUELINE PALMER; HEATHER
 12 LEWIS; and RODOLFO JARAVATA
 13 HANSON,

14 Plaintiffs,

15 v.

16
 17 ROB BONTA, in his official capacity
 as Attorney General of California;
 18 KRISTINA LAWSON, in her official
 19 capacity as President of the Medical
 Board of California; and LORETTA
 20 MELBY, in her official capacity as
 21 Executive Officer of the California
 Board of Registered Nursing;

22 Defendants.
 23

Case No. 5:23-cv-01047-JGB-SP

**AMENDED COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Sarah Erny, who is not party to this case, holds a Doctorate in Nursing
3 Practice (DNP), the highest advanced degree in nursing. On her website, she
4 truthfully used the title “Dr.,” while also identifying herself as a nurse practitioner.
5 Because of that truthful disclosure, she was fined over \$20,000 and subjected to
6 administrative actions to revoke her nursing and nurse practitioner licenses in
7 California. These actions were undertaken despite no allegation that a patient or
8 potential patient believed Dr. Erny was a physician. Nor was there any allegation
9 that an individual was harmed by her truthful use of the title “Dr.” Because of these
10 recent actions against Dr. Erny, Plaintiffs here fear that their truthful use of “Dr.”
11 would be similarly punished.

12 2. Defendants are California state officials charged with enforcing a law
13 that criminalizes the truthful use of the title “Dr.” by any healthcare professional
14 who is not a licensed physician or surgeon. That means veterinarians, dentists,
15 pharmacists, physical therapists, and nurse practitioners are subject to severe
16 penalties if they truthfully refer to themselves as “doctor.” This is true even where
17 the doctor specifies the specific profession in which he or she has obtained his or her
18 doctorate degree. The statute that mandates this regime goes far beyond patient
19 protection and violates the First Amendment right of doctors to truthfully describe
20 themselves and their credentials.

21 3. California has appropriated a common title used by a variety of
22 educated professionals and reserved it for legal use by only a select group of
23 professionals—licensed physicians and surgeons. Plaintiffs here are all experienced
24 and accomplished advanced nurse practitioners who have earned doctorate degrees.
25 Nevertheless, they are vulnerable to criminal and administrative action by the state,
26 just like Dr. Erny. Under the First Amendment to the United States Constitution,
27 professionals may speak truthfully about their titles without the threat of fines, loss
28

1 of license, and other regulatory action to strip them of their livelihoods. This case
2 seeks to vindicate those constitutional rights.

3 **JURISDICTION AND VENUE**

4 4. This action arises under the First and Fourteenth Amendments to the
5 United States Constitution, 42 U.S.C § 1983. This Court has jurisdiction over these
6 federal claims under 28 U.S.C. § 1331 (federal question) and § 1343(a) (redress for
7 deprivation of civil rights). Declaratory relief is authorized by the Declaratory
8 Judgment Act, 28 U.S.C. §§ 2201–2202.

9 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
10 a substantial part of the events giving rise to the claim occurred or will occur in this
11 district.

12 **PARTIES**

13 6. Jacqueline Palmer is a United States citizen and resident of Lancaster
14 in Los Angeles County, California. She began her nursing career in 2003 as a
15 Licensed Vocational Nurse (LVN). Dr. Palmer has earned a Bachelor’s degree in
16 nursing, two Master’s degrees (Nursing Leadership and Family Nurse Practitioner),
17 with a third Master’s degree (Psychiatric Nurse Practitioner) expected in 2023. She
18 earned a Doctorate in Nursing Practice in 2020.

19 7. Heather Lewis is a United States citizen and resident of Indian Wells in
20 Riverside County, California. Dr. Lewis earned a Master of Science in Nursing
21 Education (MSN-Ed) in 2014 and a Master of Science in Family Nursing Practice
22 (MSN-FNP) in 2016. In March 2023, Dr. Lewis became a Doctor of Nursing
23 Practice (DNP).

24 8. Rodolfo Jaravata Hanson is a United States citizen and resident of
25 Murrieta in Riverside County, California. He received his Bachelor of Science in
26 Nursing (BSN) in 2017, when he began working as an Intensive Care and
27 Emergency Department nurse. Dr. Hanson earned a Master of Science in Nursing,
28 on the Family Nurse Practitioner track (MSN-FNP) in 2019. Since then, he has

1 worked as a nurse practitioner in neurosurgery and pre-anesthesia. Dr. Hanson
2 graduated with his Doctor of Nursing Practice on May 23, 2023.

3 9. Defendant Rob Bonta is the Attorney General of the state of California.
4 As Attorney General, he has primary responsibility for judicial enforcement of the
5 state’s laws, including the provision of California Business & Professions Code
6 challenged in this lawsuit. Attorney General Bonta has authority to bring actions for
7 violations of the Business & Professions Code before the state’s regulatory boards,
8 including the Board of Registered Nursing. The Attorney General has “direct
9 supervision over every district attorney ... in all matters pertaining to the duties of
10 their [] offices.” Cal. Const. art. 5, § 13. Attorney General Bonta is sued in his official
11 capacity.

12 10. Defendant Kristina Lawson is the President of the Medical Board of
13 California, which is responsible for regulating and licensing the practice of medicine
14 in California as well as investigating and enforcing violations of the Medical Practice
15 Act, Cal. Bus. & Prof. Code § 2000, *et seq.* Ms. Lawson is sued in her official
16 capacity.

17 11. Defendant Loretta Melby is the Executive Officer of the California
18 Board of Registered Nursing, the state entity responsible for regulating and licensing
19 the practice of nursing in California and for investigating and taking disciplinary
20 actions against its licensees, pursuant to the Nursing Practice Act, Cal. Bus. & Prof.
21 Code § 2700, *et seq.* Ms. Melby is sued in her official capacity.

22 **FACTUAL ALLEGATIONS**

23 **The Challenged Law and Its Enforcement**

24 12. Cal. Bus. & Prof. Code § 2054(a) provides, in relevant part:

25 Any person who uses in any sign, business card, or letterhead, or, in an
26 advertisement, the words “doctor” or “physician,” the letters or prefix
27 “Dr.,” the initials “M.D.,” or any other terms or letters indicating or
28 implying that he or she is a physician and surgeon ... without having at
the time of so doing a valid, unrevoked, and unsuspended certificate as
a physician and surgeon under this chapter, is guilty of a misdemeanor.

1 13. The Physician and Surgeon certification referred to in section 2054(a)
2 and issued by the Medical Board states: “The Medical Board of California certifies
3 that [NAME][,] a graduate of [MEDICAL SCHOOL][,] possesses the qualifications,
4 education and training prescribed by law and is hereby granted a license as a
5 Physician and Surgeon entitled to practice medicine in the state of California.” These
6 license certifications do not include the title “Dr.” or the term “doctor” anywhere.

7 **The Case of Dr. Sarah Erny**

8 14. In August 2019, an anonymous individual filed a complaint with the
9 Medical Board that a nurse practitioner named Sarah Erny was using the title “Dr.”
10 with patients at her clinic and on her website. The complaint triggered an
11 investigation by the Health Quality Investigation Unit, the investigative body of the
12 Medical Board and part of the Department of Consumer Affairs’ enforcement unit.

13 15. On August 25, 2022, Defendant Bonta filed an Accusation before the
14 Board of Registered Nursing on behalf of Defendant Melby (as Complainant). The
15 Accusation, which acknowledges that Dr. Erny holds a Doctorate in Nursing
16 Practice, seeks to revoke or suspend Dr. Erny’s Registered Nursing license and her
17 Nurse Practitioner certificates, and to order her to pay the Nursing Board for
18 “reasonable” costs of investigation and enforcement of the case. (Exh. 1). The
19 Accusation is based, in part, on alleged violations of section 2054 for Dr. Erny’s
20 truthful use of “Dr.” to describe herself.

21 16. On October 27, 2022, acting under the authority of Defendant Bonta,
22 Dan Dow, District Attorney for San Luis Obispo County, filed a Complaint for
23 Injunction, Civil Penalties[,] and Other Equitable Relief against Dr. Erny, alleging,
24 in part, violation of section 2054. (Exh. 2, ¶ 8).

25 17. Dr. Erny entered into a stipulated agreement to resolve the DA’s case.
26 According to a Final Civil Judgment and Court Order According to Stipulation
27 (Order) (Exh. 3), Dr. Erny was ordered to promptly pay \$19,750 in civil penalties.
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1 Among other demands, the Order also required Dr. Erny to immediately cease using
2 the title “Dr.,” even though she is a Doctor of Nursing Practice.

3 18. On January 4, 2023, the Medical Board issued a Citation for a violation
4 of section 2054. The Citation ordered Dr. Erny to pay a \$2,500 fine and to
5 “immediately cease and desist the use of the initials ‘Dr.’” (Exh. 4).

6 **Defendants’ Actions Chill Plaintiffs’ Speech**

7 19. News of the actions against Dr. Erny appeared in the media, where
8 Plaintiffs learned about them. As Doctors of Nursing Practice who have used, use,
9 or intend to use the title “Dr.” in their practice and on websites and social media,
10 Plaintiffs fear that Defendants will take action against them similar to those taken
11 against Dr. Erny.

12 20. At the family practice clinic where she serves primary care clientele,
13 Dr. Palmer’s colleagues, including physicians, have never expressed concerns that
14 she is referred to as “Dr. Palmer, FNP.” When she interacts with all new patients at
15 the clinic, she explains that she is a nurse practitioner and *not* a physician or surgeon,
16 as required by Cal. Bus. & Prof. Code §§ 2837.103(d) and 2837.104(d).

17 21. Dr. Palmer’s clinician’s jacket has her name embroidered with “Dr. J.
18 Palmer, FNP-C.” She has signed her name using “Dr.” and qualified it with “FNP”
19 on official clinic documents.

20 22. Dr. Palmer has never misrepresented to anyone, directly or indirectly,
21 that she is a physician, nor have her patients or physician colleagues mistaken her
22 for a physician.

23 23. Since learning about Defendants’ actions against Dr. Erny, Dr. Palmer
24 no longer signs her name with the title “Dr.” She has hung up her clinician’s jacket
25 embroidered with “Dr. J. Palmer, FNP-C” on the front. She has asked others in the
26 clinic not to refer to her as “Dr.” and has refrained from referring to herself that way.
27 Dr. Palmer fears that Defendants will open an enforcement action against her.

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1 24. A recent DNP graduate, when Heather Lewis interacts with new
2 patients, she explains that she is a nurse practitioner and *not* a physician or surgeon,
3 as required by Cal. Bus. & Prof. Code §§ 2837.103(d) and 2837.104(d). Dr. Lewis
4 has never misrepresented to anyone, directly or indirectly, that she is a physician,
5 nor have her patients or physician colleagues mistaken her for a physician. In fact,
6 she has been recognized as a “Best In The Desert, Nurse Practitioner” two years in
7 a row.

8 25. Dr. Lewis desires and intends to use the title “Dr.,” qualified by her
9 credentials “FNP-C, DNP” in a professional context, including with patients and
10 colleagues. Specifically, Dr. Lewis had business cards and an office door name plate
11 printed with her title, “Dr. Heather Lewis, FNP-C, DNP,” after she received her
12 doctorate. She used them for a brief time but has now stopped in order to comply
13 with the law. She would return to using the business cards and name plate if it were
14 legal to do so.

15 26. Dr. Lewis has stopped truthfully referring to herself on social media as
16 “Dr. Heather Lewis, FNP-C, DNP” in order to comply with the law. She would
17 return to doing so if it were legal.

18 27. Since learning about Defendants’ actions against Dr. Erny, Dr. Lewis
19 now fears that Defendants will open an enforcement action against her if she uses
20 the title “Dr.” as described in ¶¶ 25 and 26, above.

21 28. Dr. Hanson is a newly minted DNP who works in an ambulatory pre-
22 anesthesia testing clinic. He is in the process of establishing his own clinic that will
23 provide esthetic services. When he interacts with new patients, he explains that he is
24 a nurse practitioner and *not* a physician or surgeon, as required by Cal. Bus. & Prof.
25 Code §§ 2837.103(d) and 2837.104(d). Dr. Hanson has never misrepresented to
26 anyone, directly or indirectly, that he is a physician, nor have his patients or
27 physician colleagues mistaken him for a physician.

28

1 29. Dr. Hanson desires and intends to use the title “Dr.,” qualified by his
2 educational and specialty credentials, in a professional context, including with
3 current patients and at the esthetics clinic he plans to open. Specifically, if it were
4 legal to do so, Dr. Hanson would use the honorific title on business cards, his work
5 scrubs, his prescription pad, and on the professional website he has been building
6 for his planned esthetics clinic. Dr. Hanson wants to assure patients and colleagues
7 that he has pushed himself to achieve the highest educational qualifications possible
8 for an advanced nurse practitioner.

9 30. Since learning about Defendants’ actions against Dr. Erny, Dr. Hanson
10 has refrained from engaging in the speech described in ¶ 29 but would do so if it
11 were legal. However, since learning about Defendants’ actions against Dr. Erny, Dr.
12 Hanson fears that Defendants would open an enforcement action against him if he
13 used the title “Dr.” as described in ¶ 29.

14 31. Plaintiffs have spent years earning their advanced degrees and
15 qualifications and believe they should be able to speak truthfully about them in their
16 workplaces, on their business cards, on their work garb, and on the internet and social
17 media, so long as they clarify that they are not physicians or surgeons, as required
18 by Cal. Bus. & Prof. Code §§ 2837.103(d) and 2837.104(d). However, in response
19 to the news of Defendants’ actions against Sarah Erny, Plaintiffs fear that
20 Defendants will enforce section 2054 against them even if their use of the title “Dr.”
21 includes self-identification as a nurse practitioner.

22 **CAUSE OF ACTION**

23 **Violation of Plaintiffs’ First Amendment Right to Freedom of Speech**

24 **(42 U.S.C. § 1983)**

25 32. Plaintiffs reallege and incorporate all preceding paragraphs.

26 33. An actual and substantial controversy exists between Plaintiffs and
27 Defendants. All Plaintiffs have the right to self-identify by using the title “Dr.” and
28 term “doctor” to truthfully describe their educational and professional credentials.

1 34. The First Amendment to the United States Constitution, as applied to
2 the States through the Fourteenth Amendment, protects the truthful, non-misleading
3 speech that Plaintiffs have engaged in and would continue to engage in absent threat
4 of enforcement by Defendants.

5 35. On its face and as enforced by Defendants, Cal. Bus. & Prof. Code
6 § 2054 prohibits Plaintiffs from engaging in lawful communication to accurately
7 describe their qualifications and accomplishments by using the title “Dr.” or the term
8 “doctor.”

9 36. The application of section 2054 to Plaintiffs and other professionals
10 who truthfully use the title “Dr.” or the word “doctor” burdens their rights to free
11 speech.

12 37. Section 2054 is both a content-based and a speaker-based restriction on
13 Plaintiffs’ freedom of speech because it identifies certain words (“Dr.” and “doctor”)
14 and restricts who is allowed to use them.

15 38. Section 2054 is not appropriately tailored to serve a substantial
16 government interest, much less a compelling one.

17 39. By prohibiting Plaintiffs from accurately describing their qualifications
18 and accomplishments by using the title “Dr.” and term “doctor”, Defendants
19 maintain and actively enforce a set of laws, practices, policies, and procedures under
20 color of state law that deprive Plaintiffs of their right to free speech, in violation of
21 the First Amendment to the United States Constitution, as applied to the States
22 through the Fourteenth Amendment and 42 U.S.C. § 1983.

23 40. Plaintiffs have no adequate remedy at law to compensate for the loss of
24 this fundamental freedom and will suffer irreparable injury absent an injunction
25 restraining Defendants’ enforcement of the titling restriction found in section 2054.

26 41. Plaintiffs are therefore entitled to prospective declaratory and
27 permanent injunctive relief against continued enforcement and maintenance of
28 Defendants’ unconstitutional application of section 2054.

RELIEF SOUGHT

Wherefore, Plaintiffs respectfully request the Court enter judgment against Defendants as follows:

1. A declaration that Cal. Bus. & Prof. Code § 2054, on its face and as applied to Plaintiffs, violates the First and Fourteenth Amendments to the United States Constitution;

2. A permanent injunction restraining Defendants and Defendants’ officers, agents, affiliates, servants, successors, employees, and all other persons in active concert or participation with Defendants from enforcing Cal. Bus. & Prof. Code § 2054 against Plaintiffs and all others for their truthful and accurate self-description using the title “Dr.” or term “doctor”;

3. Judgment for Plaintiffs and against Defendants for the deprivation of their rights;

4. An award of Plaintiffs’ costs and attorneys’ fees under 42 U.S.C. § 1988; and

5. Any such further relief as the Court deems just and proper.

DATED: September 25, 2023.

Respectfully submitted,

DONNA G. MATIAS
CALEB R. TROTTER
Pacific Legal Foundation

By /s/ Donna G. Matias
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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**
11

12 In the Matter of the Accusation Against:

Case No. 4002022007118

13 **SARAH ANNE ERNY, AKA SARAH**
14 **ANNE COLE**
15 **471 Ocean View Ave.**
Pismo Beach, CA 93449

ACCUSATION

16 **Registered Nurse License No. 830176**
17 **Nurse Practitioner Certificate No. 22500**
Nurse Practitioner Furnishing Certificate
18 **No. 22500**

19 Respondent.

20
21 **PARTIES**

22 1. Loretta Melby, R.N., M.S.N. (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
24 Department of Consumer Affairs.

25 2. On or about September 27, 2012, the Board issued Registered Nurse License Number
26 830176 to Sarah Anne Erny, aka Sarah Anne Cole (Respondent). The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 September 30, 2022, unless renewed.

1 9. Section 2052 of the Code states:

2 (a) Notwithstanding Section 146 , any person who practices or attempts to
3 practice, or who advertises or holds himself or herself out as practicing, any system or
4 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates
5 for, or prescribes for any ailment, blemish, deformity, disease, disfigurement,
6 disorder, injury, or other physical or mental condition of any person, without having
7 at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in
8 this chapter or without being authorized to perform the act pursuant to a certificate
9 obtained in accordance with some other provision of law is guilty of a public offense,
10 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment
11 pursuant to subdivision (h) of Section 1170 of the Penal Code , by imprisonment in a
12 county jail not exceeding one year, or by both the fine and either imprisonment.

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

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

18 10. Section 2054 of the Code states, in pertinent part:

19 (a) Any person who uses in any sign, business card, or letterhead, or, in an
20 advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the
21 initials "M.D.," or any other terms or letters indicating or implying that he or she is a
22 physician and surgeon, physician, surgeon, or practitioner under the terms of this or
23 any other law, or that he or she is entitled to practice hereunder, or who represents or
24 holds himself or herself out as a physician and surgeon, physician, surgeon, or
25 practitioner under the terms of this or any other law, without having at the time of so
26 doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon
27 under this chapter, is guilty of a misdemeanor.

28 ...

11. Section 2836.1 of the Code states, in pertinent part:

Neither this chapter nor any other provision of law shall be construed to
prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of
the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in
accordance with standardized procedures or protocols developed by the nurse
practitioner and the supervising physician and surgeon when the drugs or devices
furnished or ordered are consistent with the practitioner's educational preparation or
for which clinical competency has been established and maintained.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as
defined by Section 2725, or protocol. The standardized procedure or protocol shall be
developed and approved by the supervising physician and surgeon, the nurse
practitioner, and the facility administrator or the designee.

(c)(1) The standardized procedure or protocol covering the furnishing of drugs
or devices shall specify which nurse practitioners may furnish or order drugs or

1 devices, which drugs or devices may be furnished or ordered, under what
2 circumstances, the extent of physician and surgeon supervision, the method of
3 periodic review of the nurse practitioner's competence, including peer review, and
4 review of the provisions of the standardized procedure.

5 (2) In addition to the requirements in paragraph (1), for Schedule II controlled
6 substance protocols, the provision for furnishing Schedule II controlled substances
7 shall address the diagnosis of the illness, injury, or condition for which the Schedule
8 II controlled substance is to be furnished.

9 (d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs
10 under physician and surgeon supervision. Physician and surgeon supervision shall not
11 be construed to require the physical presence of the physician, but does include (1)
12 collaboration on the development of the standardized procedure, (2) approval of the
13 standardized procedure, and (3) availability by telephonic contact at the time of
14 patient examination by the nurse practitioner.

15 (e) For purposes of this section, no physician and surgeon shall supervise more
16 than four nurse practitioners at one time.

17 (f)(1) Drugs or devices furnished or ordered by a nurse practitioner may include
18 Schedule II through Schedule V controlled substances under the California Uniform
19 Controlled Substances Act (Division 10 (commencing with Section 11000) of the
20 Health and Safety Code) and shall be further limited to those drugs agreed upon by
21 the nurse practitioner and physician and surgeon and specified in the standardized
22 procedure.

23 (2) When Schedule II or III controlled substances, as defined in Sections 11055
24 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a
25 nurse practitioner, the controlled substances shall be furnished or ordered in
26 accordance with a patient-specific protocol approved by the treating or supervising
27 physician. A copy of the section of the nurse practitioner's standardized procedure
28 relating to controlled substances shall be provided, upon request, to any licensed
pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse
practitioner furnishing the order.

...

REGULATORY PROVISIONS

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

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

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

2 For purposes of this article:

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

5 (b) “Organized health care system” means a health facility which is not licensed
6 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,
7 physicians' offices and public or community health services;

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

10 14. California Code of Regulations, title 16, section 1472, states:

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

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

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

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

19 (b) Each standardized procedure shall:

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

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

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

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

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

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

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

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

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

(10) Specify patient record keeping requirements.

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

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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 licensee 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.

CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

17. Section 4021 of the Code states:

Controlled substances: means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

18. Section 4022 of the Code states:

“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 _____,” “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.

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1 19. Testosterone is a Schedule III controlled substance pursuant to Health and Safety
2 Code section 11506, subdivision (f)(30), and a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 **FACTUAL ALLEGATIONS**

5 20. At all times relevant herein, Respondent, a nurse practitioner, was doing business as
6 Holistic Women’s Healing, a holistic medical facility located in Arroyo Grande, California,
7 where Respondent worked as a nurse practitioner.

8 21. On or about August 30, 2019, the Medical Board of California received a complaint
9 alleging that Respondent was representing to patients that she was a medical doctor, and that
10 Respondent was writing prescriptions for testosterone to patients who see her under the
11 assumption that she is a medical doctor. An investigation was initiated, which determined the
12 following:

13 22. Holistic Women’s Healing was operating as a sole proprietorship business. For the
14 period in or about January 2020 through December 2021, Respondent failed to have a valid
15 business license for Holistic Women’s Health.

16 23. On Respondent’s Holistic Women’s Healing website, Respondent made statements
17 representing to the public that she was a medical doctor, including, but not limited to, the
18 following:

- 19 • “My patients call me Dr. Sarah . . .”
20 • “I practice medicine with a VERY integrative style...”
21 • “Appointments are still available with Dr. Sarah”

22 24. On at least 14 occasions on Respondent’s Holistic Women’s Healing website,
23 Respondent referred to herself as “Dr. Sarah Emy” in reference to authoring various blog articles.
24 Respondent’s Holistic Women’s Healing website also allowed individuals to subscribe to receive
25 “Dr. Sarah’s Newsletter.”

26 25. On another website titled “Dr. Sarah’s Wellness Center” Respondent offered courses
27 to the public in “Essential Oils for Emotional Health” and “Lab Review for Thyroid Health.”

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1 26. Respondent holds a doctor of nursing practice (DNP) educational degree only.
2 Respondent is not licensed as a medical doctor by the Medical Board of California.

3 27. Respondent was operating Holistic Women’s Healing under a collaboration and
4 supervision arrangement, including Standardized Procedures and Protocols, with Dr. A.M., an
5 obstetrician/gynecologist (OB/GYN) physician.

6 28. The investigation revealed that for the period from late 2018 through the first half of
7 2020, Respondent would see approximately 24-30 patient per week, with approximately 70% of
8 her patients receiving prescriptions for controlled substances. During this time, Respondent
9 wrote more than 1,600 prescriptions for Schedule III controlled substances, the majority of which
10 were for testosterone (an anabolic steroid), for approximately 277 patients, including male
11 patients being treated for hypogonadism or profound testosterone deficiency, as well as female
12 patients being treated for peri and post-menopausal issues. The majority of these prescriptions
13 were for micronized testosterone powder, which would require compounding and assay for
14 appropriate usage and dosage, while the others were for testosterone oil, which would need to be
15 administered via injection.

16 29. A review of Respondent’s controlled substance prescribing patterns revealed that
17 Respondent was writing an excessive amount of testosterone, which was consistent with
18 overprescribing.

19 30. Patients receiving prescriptions for testosterone are generally being treated for
20 complex medical issues that require careful laboratory monitoring and repeat physical
21 examinations for proper diagnosis and treatment, and are usually seen under the purview of
22 physicians specializing in endocrinology or urology.

23 31. Respondent’s facility consisted of an office environment without proper medical
24 equipment, which would make physical examinations, assessments and treatment of patients
25 difficult.

26 32. The investigation also determined that, during this time period, no physician was
27 present at the facility. Dr. A.M.’s supervision of Respondent only consisted of a weekend visit
28 from out-of-state every 2-3 months to review approximately 20% of Respondent’s charts. There

1 was no contemporaneous sharing of medical records, and little to no oversight or monitoring of
2 Respondent's prescribing of controlled substances to patients.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 33. Respondent is subject to disciplinary action under Code section 2761, subdivision
6 (a)(1), in conjunction with California Code of Regulations, title 16, section 1442, on the grounds
7 of unprofessional conduct, in that Respondent committed acts constituting gross negligence.
8 Complainant refers to, and by this reference incorporates, the allegations set forth above in
9 paragraphs 20-32, as though set forth in full herein.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Representation of Being a Medical Doctor without Licensure)**

12 34. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
13 on the grounds of unprofessional conduct for violating Code sections 2052, subdivision (a), and
14 2054, in that Respondent stated, represented, indicated and/or implied that she was a doctor on
15 her website(s), when in fact Respondent is not validly licensed as medical doctor by the Medical
16 Board of California. Complainant refers to, and by this reference incorporates, the allegations set
17 forth above in paragraphs 20-32, as though set forth in full herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 35. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
21 in that Respondent committed acts constituting unprofessional conduct. Complainant refers to,
22 and by this reference incorporates, the allegations set forth above in paragraphs 20-32, as though
23 set forth in full herein.

24 **PRAYER**

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

27 1. Revoking or suspending Registered Nurse License Number 830176, issued to Sarah
28 Anne Erny, aka Sarah Anne Cole;

1 2. Revoking or suspending Nurse Practitioner Certificate Number 22500, issued to
2 Sarah Anne Erny, aka Sarah Anne Cole;

3 3. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 22500,
4 issued to Sarah Anne Erny, aka Sarah Anne Cole;

5 4. Ordering Sarah Anne Erny to pay the Board of Registered Nursing the reasonable
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions
7 Code section 125.3; and,

8 5. Taking such other and further action as deemed necessary and proper.

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DATED: August 25, 2022

Sharon Johnson
for LORETTA MELBY, R.N., M.S.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2022602673
65342288.docx

**ELECTRONICALLY
FILED
10/27/2022 12:47 PM**

SAN LUIS OBISPO SUPERIOR COURT
BY 
D. Rincon, Deputy Clerk

1 DAN DOW
District Attorney, County of San Luis Obispo
2 KENNETH J. JORGENSEN (SBN: 220887)
Deputy District Attorney
3 1035 Palm Street, Room 450
4 San Luis Obispo, CA 93408
Telephone (805) 781-5800

5 Attorneys for Plaintiff
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN LUIS OBISPO**

10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

12 v.

13 SARAH ANNE ERNY,

14 Defendant.

COURT NO. 22CV-0589

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

(Bus. & Prof. Code, §§ 2054, 17200 *et*
seq., 17500 *et seq.*, and 17900 *et seq.*)
Exempt from fees per Gov. Code, § 6103

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18 Plaintiff, the People of the State of California, by and through Dan Dow, District
19 Attorney for the County of San Luis Obispo, State of California, is informed and believes and
20 based thereon alleges:

21 1. The People seek to enjoin Defendant, a registered nurse practitioner, from referring
22 to herself as “Dr. Sarah Erny” to the public, which is prohibited under California law. Only
23 physicians, medical doctors, and a few other medical providers are permitted to use the title
24 “doctor” under California’s Medical Practices Act so as to protect the public.

25 **VENUE AND JURISDICTION**

26 2. Dan Dow, District Attorney for the County of San Luis Obispo, State of
27 California, brings this action in the public interest in the name of the People of the State of
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1 California pursuant to sections 2054, 17200 *et seq.*, 17500, *et. seq.*, and 17900 *et seq.* of the
2 Business and Professions Code.

3 3. This Court has jurisdiction according to Article 6, section 10, of the California
4 Constitution.

5 4. Venue is proper in this county under Code of Civil Procedure section 393, in that
6 the violations alleged in this Complaint occurred in the County of San Luis Obispo.

7 **DEFENDANT**

8 5. Defendant SARAH ANNE ERNY is, at all times mentioned, doing business in
9 San Luis Obispo County, California.

10 4. At all times mentioned, Defendant SARAH ANNE ERNY (“Defendant”) is a
11 California Nurse Practitioner, license number 22500.

12 5. As a licensed registered nurse within California, she is regulated by Chapter 6,
13 “Nursing Practice Act,” commencing at Business and Professions Code section 2700.

14 6. At no time was Defendant a physician, medical doctor, surgeon, or other qualified
15 medical provider as regulated under Chapter 5, “Medical Practices Act,” section 2054 of the
16 Business Professions Code entitled to refer to herself to the public as “Dr. Erny.”

17 **STATUTORY AND REGULATORY BACKGROUND**

18 7. The Medical Board of California is a consumer protection agency whose highest
19 and paramount priority is the protection of the public. (Business & Professions Code § 2001.1)

20 8. One mechanism used to protect the public by the Medical Board is to significantly
21 limit those medical providers that are permitted to call themselves “doctor” or “physician.” Under
22 California’s Medical Practices Act, the words “doctor” or the prefix “Dr.,” “or any other terms
23 or letters indicating or implying that he or she is a physician and surgeon...without
24 having...certificate as a physician and surgeon...is guilty of a misdemeanor.” (Business &
25 Professions Code § 2054.) This statute was enacted to ensure that “every person engaged in
26 professional activities [would] properly represent himself [or herself] in his [or her] true capacity
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1 by an appropriate title.” (Lawton v. Board of Medical Examiners (1956) 143 Cal.App.2d 256,
2 261.)

3 9. In addition to criminal liability, California’s Medical Practices Act also provides
4 that a medical provider’s improper identification as a “doctor” is unprofessional conduct. “Unless
5 a person authorized under this chapter [‘Medicine’] to use the title ‘doctor’ or the letters or prefix
6 ‘Dr.’ holds a physician’s and surgeon’s certificate, the use of such title, letters, or prefix without
7 further indicating the type of certificate held, constitutes unprofessional conduct.” (Business &
8 Professions Code § 2278.)

9 10. Like the Medical Board of California, the Board of Registered Nursing’s highest
10 and paramount priority the is protection of the public. (Business and Professions Code § 2708.1.)

11 11. A Registered Nurse (“RN”) in California may use the letters ‘R.N.’ after their
12 name.” (Business and Professions Code § 2732.)

13 12. A Nurse Practitioner (“NP”) is a Registered Nurse but possesses additional
14 preparation and skills than a Registered Nurse. (California Code of Regulations, title 16, § 1480.)
15 A Nurse Practitioner functions within the scope of practice as specified in the Nursing Practice
16 Act and as applied to all Registered Nurses. (California Code of Regulations, title 16, § 1485.)

17 13. Registered nurses who have been certified as Nurse Practitioners by the California
18 Board of Registered Nursing may use the titles “Advanced Practice Registered Nurse” and
19 “Certified Nurse Practitioner” and place the letters “APRN-CNP,” “R.N., N.P.,” or in
20 combination with other letters or words identifying categories of specialization, including but not
21 limited to the following: adult nurse practitioner, pediatric nurse practitioner, obstetrical-
22 gynecological nurse practitioner, and family nurse practitioner. (California Code of Regulations,
23 title 16, § 1481.)

24 **GENERAL ALLEGATIONS**

25 14. Defendant contends that she earned a Doctor of Nursing Practice from Vanderbilt
26 University.

27 15. Defendant contends that after earning her doctorate as a Nurse Practitioner, her
28

1 patients “were so proud of her they started calling me ‘Dr. Sarah’.” Defendant also contends that
2 her supervising physician told Defendant that she needed to “own my degree” and had his staff
3 call her “Dr. Sarah” in the office and with patients.

4 16. In approximately 2018, Defendant opened and began operating a business called
5 “Holistic Women’s Healing,” wherein Defendant provided medical services and products to
6 patients. The business included an online digital presence advertising Defendant’s medical
7 services and products at www.holisticwomenshealing.com. Additionally, the business had a
8 physical office in Arroyo Grande, with street and door signage as “Holistic Women’s Healing,”
9 wherein Defendant performed medical services for patients and sold medical products.

10 17. Defendant has continuously maintained, operated, and controlled various online
11 digital presences on social media accounts wherein she described herself as “Dr. Sarah” and “Dr.
12 Sarah Erny” in a prominent manner. Her business offered medical services and medical products.

13 18. Defendant’s supervising and collaborating physician beginning in October 2018
14 was Dr. Anika Moore, an obstetrician-gynecologist. During the approximate three years of
15 supervision by Dr. Moore, Dr. Moore’s OBGYN medical practice was located outside San Luis
16 Obispo County, primarily in Santa Maria, California, and outside the State of California.

17 19. Defendant contends Dr. Moore would travel from out of state every two to three
18 months for a weekend to review approximately 20% of Defendant’s patient files.

19 20. From October 2018 until March 2022, Defendant regularly saw eight to ten
20 patients daily on Monday, Wednesday, and Friday at her office in Arroyo Grande. Upon
21 information and belief, it is alleged that most of Defendant’s patients were unaware of the
22 supervisory and collaborative arrangement between Defendant and Dr. Moore.

23 21. In addition to medical services and products, Defendant prescribed medication to
24 her patients. The Controlled Substance Utilization Review and Evaluation System (“CURES”)
25 stores Schedule II, III, IV, and V controlled substance prescription information in California.
26 Defendant’s CURES entries from late 2018 to mid-2020 show she wrote more than 1600
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1 prescriptions for Schedule 2-4 drugs, with a majority being schedule 3 drugs for over 250
2 patients.

3 22. Defendant and Dr. Moore terminated their collaborative/supervisory business
4 relationship on March 7, 2022.

5 **I.**

6 **FIRST CAUSE OF ACTION**

7 **BUSINESS & PROFESSIONS CODE SECTION 17910**

8 23. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 23,
9 inclusive, as though fully set forth here.

10 24. Business and Professions Code section 17900 provides that “the filing a fictitious
11 business name certificate is designed to make available to the public the identities of persons
12 doing business under the fictitious name.” “The purpose...is to protect those dealing with
13 individuals or partnerships doing business under fictitious names.” (Business and Professions
14 Code section 17900, subpart (a)(1).)

15 25. Section 17910 mandates that every person in California who regularly transacts
16 business under a fictitious business name shall file a fictitious business name statement.

17 26. Here, Defendant had a physical sign on the street and the entrance door of her
18 office in Arroyo Grande entitled, “Holistic Women’s Healing.” Likewise, Defendant operated a
19 website domain of www.holisticwomenshealing.com wherein Defendant promoted the sale of
20 her medical services and drug supplements. Medical services prices listed online ranged from
21 \$130 to \$350.

22 27. Defendant failed to obtain and file a fictitious business certificate for her business
23 “Holistic Women’s Healing” from January 2020 through December 2021, violating section
24 17910 of the Business & Professions Code.

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II.

SECOND CAUSE OF ACTION

BUSINESS & PROFESSIONS CODE SECTIONS 2054, 2278, & CODE OF REGULATIONS SECTION 1481 (Title 16)

28. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 27, as though fully set forth here.

29. Defendant SARAH ANNE ERNY violated Business and Professions Code sections 2054 and 2278 and California Code of Regulations, Title 16, section 1481, by holding herself out to the public and to patients as “Dr. Sarah Erny” while performing medical services and selling medical products as a Nurse Practitioner.

III.

THIRD CAUSE OF ACTION

BUSINESS & PROFESSIONS CODE SECTIONS 17200 et seq.

Unfair Business Practice

30. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 29, inclusive, as though fully set forth here.

31. Defendant has engaged in unlawful, unfair, and fraudulent acts, omissions, and practices that constitute unfair competition within Business and Professions Code Sections 17200 through 17208, as alleged above and in the First and Second Causes of Action. Accordingly, unless enjoined by order of the Court, Defendants may or will continue in the course of conduct as alleged in this Complaint.

32. In addition to the acts, omissions, and practices described the in First and Second Causes of action, Defendant also described herself as “Dr. Sarah Erny” with third-party digital healthcare platform companies such as “Healthgrades” and “Sharecare” located at www.healthgrades.com and www.sharecare.com. These online digital platforms are third-party owned and controlled businesses that seek to serve as a centralized digital hub for the public and healthcare providers. However, the companies permit health care providers to input information

1 about their practices to the public. Defendant described herself as “Dr. Sarah Erny” within these
2 third-party digital platforms. In so doing, Defendant violated California laws as alleged in the
3 Second Cause of action. Furthermore, Defendant also unfairly elevated her position among other
4 registered Nurse Practitioners within these digital platforms who had correctly identified
5 themselves as “N.P.” for Nurse Practitioner.

6 33. Further, commercial digital search engines such as Google can populate search
7 results to capture Defendant’s title as “Dr. Sarah Erny.” As a result, the public is misled to
8 believe that Defendant is a medical doctor.

9 <https://www.holisticwomenshealing.com> > ... ⓘ
10 **Dr. Sarah Erny - Holistic Women's Healing**
11 I'm Dr. Sarah Erny. ... Practitioner who is passionate about helping women find the healing they
12 need in life through holistic practices and emotional work.
13 <https://www.holisticwomenshealing.com> > about ⓘ

14 34. Based on the above, the People request injunctive relief against Defendants under
15 Business and Professions Code Section 17203 and civil penalties under Business and
16 Professions Code Section 17206, as described in the People’s prayer for relief.

17 **IV.**

18 **FOURTH CAUSE OF ACTION**

19 **BUSINESS & PROFESSIONS CODE SECTIONS 17500 et seq.**

20 **False Advertising Law**

21 35. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 34,
22 inclusive, as though fully set forth here.

23 36. According to False Advertising Law, beginning at section 17500 of the Business
24 and Professions Code, it is unlawful for a business to advertise in a manner known, or which by
25 the exercise of reasonable care should be understood, to be untrue or misleading.”

26 37. Defendant, as a nursing medical professional with a doctorate in nurse
27 practitioner, owes a duty to accurately promote her credentials while performing and advertising
28 her professional medical services to the public. Both the Medical Board of California and the
Registered Nursing Board’s paramount priority is to protect the public. Elevating her doctorate
by encouraging patients to call her “Dr. Sarah” improperly shifts the burden of understanding

1 the scope of services a registered nurse can perform. Even more so with the statement, “I’m
2 Doctor Sarah, a nurse practitioner,” when California law prescribes who is permitted to say
3 “I’m a doctor” to a patient or the public.¹

4 38. Based on the above, the People request injunctive relief against Defendants under
5 Business and Professions Code Section 17535 and civil penalties under Business and
6 Professions Code Section 17536, as described in the People’s prayer for relief.

7 **PRAYER**

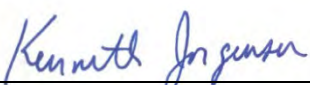
8 WHEREFORE, the plaintiff prays for judgment as follows:

- 9 1. Permanently enjoin Defendant from violating Business and Professions Code
- 10 Section 2054 of the Business and Professions Code;
- 11 2. Assess a civil penalty against Defendant for each violation of Business and
- 12 Professions Code Sections 17206 and 17536, according to proof;
- 13 3. Award the People their costs of suit, including costs of the investigation; and
- 14 4. Grant such other relief as the Court deems just and equitable.

15 Dated: October 26, 2022

Respectfully submitted,

16 DAN DOW, District Attorney
17 County of San Luis Obispo, State of California

18
19 By 
20 _____
KENNETH JORGENSEN
21 Deputy District Attorney
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26 ¹ Nationwide studies indicate the uncertainty of medical titles. See the American Medical Association’s
27 “Truth in Advertising” <https://www.ama-assn.org/system/files/2020-10/truth-in-advertising-campaign-booklet.pdf>.
28 Patients are unsure who is—and who is not—a physician. A survey found that 39% of the public believe a Doctor of
Nursing Practice was a medical doctor. It also found that 19% of the public believed a Nurse Practitioner was a
medical doctor.

10/27/2022 12:47 PM

ELECTRONICALLY FILED: 11/4/2022

San Luis Obispo Superior Court

By: Rincon, Dolores

1 DAN DOW
 District Attorney, County of San Luis Obispo
 2 KENNETH J. JORGENSEN (SBN: 220887)
 Deputy District Attorney
 3 1035 Palm Street, Room 450
 4 San Luis Obispo, CA 93408
 Telephone (805) 781-5800
 5 e-mail: kjorgensen@co.slo.ca.us

6 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN LUIS OBISPO

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 SARAH ANNE ERNY, an individual

15 Defendant.
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COURT NO. 22CV-0589

FINAL CIVIL JUDGMENT AND
ORDER ACCORDING TO
STIPULATION

18
 19 Plaintiff, the People of the State of California, appearing through its attorneys, DAN
 20 DOW, District Attorney for San Luis Obispo County, by Kenneth J. Jorgensen, Deputy District
 21 Attorney, and Defendant SARAH ANNE ERNY, (“Defendant”), and her attorney, Melanie L.
 22 Balestra, have stipulated to the entry of this Final Civil Judgment According To Stipulation
 23 (“Final Judgment”). This Court, having considered the pleadings and good cause appearing:

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff have
 25 Judgment against Defendant as follows:

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JURISDICTION AND VENUE

1. This action is brought under the laws of the State of California, and this Court has jurisdiction over the subject matter hereof and the parties hereto.

APPLICABILITY

2. All provisions of this Judgment apply to Defendant SARAH ANNE ERNY and her employees, agents, successors, and assigns, to the extent permitted by law, with actual or constructive knowledge of the terms of the Final Judgment (collectively, “Enjoined Persons”).

INJUNCTION

3. Defendant shall be and is now permanently enjoined and restrained, according to Business and Professions Code sections 2054 and 2278, as well as 17200, 17204, and 17235 from doing, directly or indirectly, by any manner or means whatsoever, any of the following within the State of California:

- a. From referring to herself as a doctor, or using the letters or prefix “Dr.,” the initials “M.D.” or any other term or letters indicating or implying that she is a physician or surgeon in the context of advertising or providing medical treatment to the public in violation of Business and Professions Code sections 2054 or 2278.

COMPLIANCE

4. Defendant shall be ordered and mandated, according to sections 17203, 17204, and 17535, for five years from the date of entry of this Judgment, to do the following:

- a. Conduct electronic searches of “Sarah Erny” to determine if any third-party medical provider digital platform is advertising or listing Defendant as “Doctor” or the by the prefix “Dr.” and to make diligent efforts to remove these references. Such searches shall occur monthly the first year and at least twice a year after that.
- b. Promptly prohibit any supervising physician or staff from referring to Defendant as “doctor” in all settings of providing medical services to the public.

1 c. Promptly correct any patient from referring to Defendant as “doctor”
2 when performing medical services or selling medical products by advising
3 the patient that Defendant is not a medical doctor but is a registered nurse
4 or nurse practitioner.

5 **MONETARY RELIEF**

6 5. Defendant shall, according to the schedule set forth below, pay Plaintiff the total
7 of \$19,750.00 as civil penalties to the San Luis Obispo County Treasury *via* District Attorney
8 under Business and Professions Code sections 17206 and 17536, as follows:

9 i. \$16,000.00 shall be allocated to civil penalties and placed in the
10 Consumer Protection Trust Fund account for the San Luis Obispo County
11 District Attorney’s Office;

12 ii. \$3,750.00 shall be allocated to investigative costs to the San Luis Obispo
13 County District Attorney’s Office.

14 6. Payment of the \$19,750 shall be made promptly, but \$15,000 paid no later than
15 30 days upon entry of the Final Judgment (“Judgment Filing Date”), with the remainder paid no
16 later than 90 days. Upon payment of the entire sum of \$19,750.00, all monetary fines, fees and
17 damages sought in this action are deemed satisfied in full.

18 7. The payment required by this Judgment shall be made payable to: San Luis
19 Obispo County Treasury’s Office. The check shall be delivered to KENNETH J. JORGENSEN,
20 Deputy District Attorney, Consumer and Environmental Protection Unit, San Luis Obispo
21 County District Attorney’s Office, 1035 Palm Street, Room 450, San Luis Obispo, California,
22 93408.

23 **NOTICES**

24 8. All notices, reports, and correspondence required by or in conjunction with this
25 Final Judgment shall be in writing and sent by U.S. Mail and e-mail to:

26 IF TO PLAINTIFF: San Luis Obispo County District Attorney
27 Consumer and Environmental Protection Unit
28 Attention: KENNETH J. JORGENSEN, DDA
1035 Palm Street, Room 450
San Luis Obispo, CA 93408

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Email: kjorgensen@co.slo.ca.us

IF TO DEFENDANT:

Melanie L. Balestra, NP, ESQ
Law Offices of Melanie L. Balestra
12 Claret
Rancho Mirage, CA 92270

balestrahealthlaw@gmail.com

RETENTION OF JURISDICTION

9. Jurisdiction shall be retained by the Court to enable any party to this Final Judgment to apply to the Court at any time for such further orders, directions, modifications, or terminations as may be necessary or appropriate for the construction, carry out, modification, or termination of any of the injunctive provisions of this Final Judgment, and the enforcement of compliance herewith; or for the punishment of violations hereunder.

EFFECT OF FINAL JUDGMENT

10. Nothing in this Final Judgment shall be construed as limiting, altering, or otherwise affecting the rights, procedures, and protections afforded to Defendant under California Business and Professions Code, nor shall a minor violation that is cured be considered a violation of this Final Judgment.

INTEGRATION

11. This Final Judgment constitutes the entire agreement between the Parties hereto and may not be amended or supplemented except as provided herein.

MODIFICATION

12. This Final Judgment may be modified upon written consent by all Parties and the approval of the Court.

13. The clerk is ordered to enter this Judgment immediately, and to provide notice to the Parties through counsel.

IT IS SO ORDERED.

DATED: November 4, 2022 By 
JUDGE OF THE SUPERIOR COURT



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

Enforcement Program
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-5401
Phone: (916) 263-2528
Fax: (916) 263-2435
www.mbc.ca.gov

Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

CITATION ORDER

January 4, 2023

Sarah Cole Erny
401 Ocean View Ave
Pismo Beach, CA 93449

Citation Order No: 800-2019-059187
Citation against: Sarah Cole Erny
License number: Unlicensed in California
Violation: Section 2054 of the Business and Professions Code

An investigation or inquiry has been conducted by the Medical Board of California. As a result, Sharlene Smith issues this citation in her capacity as board official, designated by the Executive Director of the Medical Board of California (hereinafter referred to as the "Board").

Citation

An administrative citation is hereby issued to you in accordance with Business and Professions Code Section 148 for violation of section 2054 of the Business and Professions Code.

Cause for Citation

You misrepresented yourself as a physician and surgeon licensed to practice medicine in California by using the prefix "Dr." without having a valid, unrevoked, and unsuspended certificate as a physician and surgeon.

Order of Abatement

The Board is ordering you to immediately cease and desist the use of the initials "Dr."

Sarah Cole Erny
January 4, 2023
Page Two


Fine

WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS CITATION, YOU ARE REQUIRED TO PAY AN ADMINISTRATIVE FINE IN THE AMOUNT OF \$2,500.00 AS PROVIDED BY TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS SECTIONS 1364.10 AND 1364.11 FOR VIOLATION OF SECTION 2054 OF THE BUSINESS AND PROFESSIONS CODE.

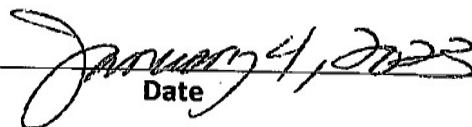
Payment of the administrative fine should be sent, in the form of check or money order, made payable to the Medical Board of California, to the following address: **Medical Board of California, Citation and Fine Program, Attn: Marco Armas, 2005 Evergreen St., Suite 1200, Sacramento, CA 95815.**

Pursuant to Title 16, California Code of Regulations Section 1364.14, an individual who has been cited, may appeal within ten (10) days after service or receipt of the Citation Order. The Board must be notified in writing of an appeal and request for an informal conference or administrative hearing. If you appeal this citation, the days given for compliance will be held in abeyance only for the violation(s) you contest. If you fail to notify the Board within the allotted time that you intend to appeal the citation, it shall be deemed a final order and shall not be subject to further administrative review.

Any questions or concerns should be directed to Marco Armas, Analyst, at (916) 263-2482.



Sharlene Smith, Staff Services Manager II
Medical Board of California


Date

Attachments: Sections 148 and 2054 of the Business and Professions Code
Sections 1364.10 - 1364.15, Title 16, California Code of Regulations
Appeal Process and Information Sheet
Notice of Appeal
Copy of Declaration of Service by United States Certified Mail