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Case Number: 2016-0672B

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The Maryland State Board of Physicians (the “Board”) charged **JASON MURPHY** (Unlicensed) (the “Respondent”) under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“H.O.”) §§ 14-101 *et seq.* (2014 Repl. Vol.)

The pertinent provisions of the Act provide the following:

H.O. § 14-601. Practicing without license.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board.

H.O. § 14-606. Penalties.

(a) *Imposition of penalties.* --

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(4) Except as provided in paragraph (5) of this subsection,¹ a person who violates § 14-601 or § 14-602 of this subtitle is:

...

(ii) Subject to a civil fine of not more than \$50,000 to be levied by the Board.

Section 14-101 of the Health Occupations Article defines the practice of medicine, in pertinent part, as follows:

(o) *Practice medicine.* -- (1) "Practice medicine" means to engage, with or without compensation, in medical:

(i) **Diagnosis;**

¹ Paragraph (5) does not apply to the Respondent.

- (ii) Healing;
- (iii) Treatment; or
- (iv) Surgery.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

- (i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:
 - 1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or
 - 2. By appliance, test, drug, operation or treatment[.]

Md. Code Regs. ("COMAR") 10.32.09 provides in pertinent part:

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

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(4) Cosmetic Medical Device.

- (a) "Cosmetic medical device" means a device that alters or damages living tissue.
- (b) "Cosmetic medical device" includes any of the following items, when the item is used for cosmetic purposes:
 - (i) Laser;
 - (ii) Device emitting light or intense pulsed light;
 - (iii) Device emitting radio frequency, electric pulses, or sound waves;
 - (iv) Microdermabrasion device; and
 - (v) Devices used for the injection or insertion of foreign or natural substances into the skin, fat, facial tissue, muscle or bone.

(5) Cosmetic Medical Procedure.

- (a) "Cosmetic medical procedure" means a procedure using a cosmetic medical device or medical product to improve an individual's appearance.
- (b) "Cosmetic medical procedure" includes the following:
 - (i) Skin treatments using lasers;
 - (ii) Skin treatments using intense pulsed light;
 - (iii) Skin treatments using radio frequencies, microwave, or electric pulses;
 - ...
 - (ix) Any treatment using a cosmetic medical device for the purpose of improving an individual's appearance.

.04 Qualifications of Individual to Whom Acts May Be Delegated and Assigned.

- A. A cosmetic medical procedure may be delegated to a physician assistant or assigned to any other health care provider licensed under Health Occupations Article, Annotated Code of Maryland, whose licensing board has determined that the procedure falls within the provider's scope of practice.

...

.09 Grounds for Discipline.

- C. Other Individual. An individual using a cosmetic medical device or performing a cosmetic medical procedure who is not a licensed physician and is not authorized to perform the cosmetic medical procedure under this chapter, or under regulations promulgated by another licensing board established by Health Occupations Article, Annotated Code of Maryland, is guilty of the practice of medicine without a license and may be subject to a fine of not more than \$50,000 under Health Occupations Article, §14-606, Annotated Code of Maryland.

...

On September 28, 2016, a conference with regard to this matter was held before Panel B of the Board's Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

I. BACKGROUND

1. At all times relevant, the Respondent was not licensed or certified by the Maryland Board of Physicians or the Maryland Board of Nursing in any capacity.
2. At all times relevant, the Respondent was employed as a tattoo artist at Studio A, a professional tattoo studio in Knoxville, Maryland.² The Respondent has been a professional tattoo artist since 2000 and has been employed at Studio A since approximately 2003.
3. On or about March 26, 2015, the Board received a complaint from a physician alleging that unlicensed individuals were performing laser tattoo removal at Studio A.
4. Thereafter the Board initiated an investigation.
5. On or about June 9, 2015, the Board notified Ms. TK, the owner of Studio A, of the complaint and the Board's investigation. The Board requested a written response.
6. On or about June 19, 2015, the Board received a written response from Ms. TK, on behalf of herself, the Respondent and Ms. JG, another unlicensed individual.³
7. According to Ms. TK's written response, in or around 2008, the previous owner of Studio A purchased a Sybaritic SkinClear TA-2, which is a laser used only for tattoo removal.

² In order to maintain confidentiality, names will not be used in these Charges.

³ The Board opened investigations against the Respondent, Ms. TK and Ms. JG.

8. On or about July 23, 2015, Board staff interviewed the Respondent. During the interview, which was under oath, the Respondent stated that between 2008 and January 2013, the Respondent performed laser tattoo removal at Studio A. The Respondent further stated that he performed laser tattoo removal approximately once every three to four months over a period of five years.

9. The Respondent stated that he stopped performing laser tattoo removal after Ms. JG completed her laser tattoo removal training.

10. The Respondent stated that when performing laser tattoo removal, he evaluated the customer's skin, reviewed relevant medical history and discussed expectations for results. The Respondent also discussed proper aftercare, including advising the customer to use over-the-counter anti-inflammatory medication to treat pain or swelling.

11. There have not been any complaints of injury to any clients who received laser tattoo removal from the Respondent.

12. The Respondent has not performed laser tattoo removal since approximately 2013. Furthermore, upon receiving notice of the complaint, Studio A ceased offering laser tattoo removal.

13. In response to a Board subpoena, Ms. TK provided copies of completed "Laser Tattoo Removal Informed Consent" forms. The form provides informed consent for the laser tattoo removal procedure and requires the client to initial after myriad statements pertaining to the laser treatment, possible side effects and aftercare instructions. The client also signs the consent form.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that by performing laser tattoo removal, the Respondent practiced medicine in Maryland without a license by the Board in violation of H.O. §14-601, and the Board's regulations under Code Regs. Md. 10.32.09 *et seq.*

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board, hereby:

ORDERED that the Respondent shall immediately **CEASE AND DESIST** from the unlicensed practice of medicine, including the performance of cosmetic medical procedures as defined in COMAR 10.32.09.02B(5); and it is further

ORDERED that no later than **THIRTY (30) DAYS** from the date of this Consent Order, the Respondent shall pay a monetary fine in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**. This payment shall be made by certified or bank guaranteed check(s) made payable to the Maryland Board of Physicians. The check(s) should be mailed to Maryland State Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann. General Provisions §§ 4-101 *et seq.*

11/04/2016
Date

Christine A. Farrelly
Christine A. Farrelly, Executive Director

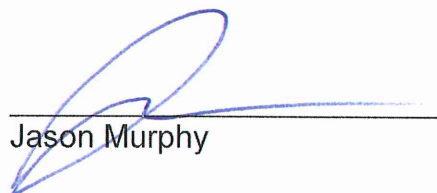
CONSENT

I, Jason Murphy, acknowledge that for financial reasons, I am not represented by counsel and did not consult with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of a disciplinary panel of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

Nov 1 2016
Date


Jason Murphy

NOTARY

West Virginia
STATE OF ~~MARYLAND~~

CITY/COUNTY OF Jefferson:

I HEREBY CERTIFY that on this 1 day of November, 2016 before me, a Notary Public of the foregoing State personally appeared Jason Murphy, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Shane A. Marrone
Notary Public

My Commission Expires: 02/13/2021

