

<p>IN THE MATTER OF</p> <p>KEITH BOUCHELION</p> <p style="padding-left: 100px;">Respondent</p> <p>(Unlicensed)</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>MARYLAND STATE</p> <p>BOARD OF PHYSICIANS</p> <p>Case Number: 2219-0197A</p>
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CEASE AND DESIST ORDER

Pursuant to the authority granted to Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) under Md. Code Ann., Health Occ. (“Health Occ.”) § 14-206(e)(2) (2014 Repl. Vol. & 2018 Supp.), Panel A hereby orders **KEITH BOUCHELION** (the “Respondent”), an unlicensed individual, to immediately **CEASE AND DESIST** from all activities associated with the practice of medicine in the State of Maryland, as defined in Health Occ. § 14-101(o).

The pertinent provisions of the Maryland Medical Practice Act (the “Act”), Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. & 2018 Supp.), under which Panel A issues this Order provide the following:

§ 14-101. Definitions.

- (o) *Practice medicine.* – (1) “Practice medicine” means to engage, with or without compensation, in medical:
 - (i) Diagnosis;
 - (ii) Healing;
 - (iii) Treatment;
 - (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[.]

§ 14-206. Judicial Powers.

...

(e) *Cease and desist orders; injunctions.* – A disciplinary panel may issue a cease and desist order or obtain injunctive relief against an individual for:

- (1) Practicing medicine without a license[.]

§ 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.

The pertinent provisions of the Board's regulations in Md. Code Regs. provide:

Ch. 09 Delegation and Assignment of Performance of Cosmetic Medical Procedures and Use of Cosmetic Medical Devices.

.01. Scope.

A. A. This chapter governs the performance, delegation, assignment, and supervision of cosmetic medical procedures, and the use of cosmetic medical devices by a physician or under a physician's direction.

...

D. This chapter does not authorize the delegation of any duties to any person who is not licensed under Health Occupations Article, Annotated Code of Maryland.

.02. Definitions.

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

B. Terms Defined.

...

(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 pulse light;
 - (iii) Device emitting radio frequency, electric pulses, or sound waves; and
 - (iv) 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;
 - ...
 - (v) Skin treatments with phototherapy; [and]
 - ...
 - (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[.]

INVESTIGATIVE FINDINGS¹

Based on the investigatory information received by, made known to, and available to Panel A, there is reason to believe that the following facts are true:

I. BACKGROUND AND COMPLAINT

1. At all relevant times, the Respondent has never been licensed to practice medicine in the State of Maryland. He has never been licensed or certified by any health occupations licensing board in Maryland.

2. At all relevant times, the Respondent co-owned a medical spa practice (the "Practice")² located in College Park, Maryland with a physician ("Physician A"), who is licensed by the Board to practice medicine.

3. At all relevant times, the Practice offered cosmetic medical procedures including laser hair removal and other laser and radiofrequency skin services.

4. On or about March 25, 2019, the Board received a complaint from a patient ("Patient A") alleging that, on or about March 13, 2019, the Respondent performed a laser hair removal treatment on Patient A's pubic region without Physician A present. Patient A said that she had seen Physician A in the past for laser hair removal treatments and had an appointment with Physician A on March 13, 2019. When she arrived at the Practice, Physician A was not there. According to Patient A, the Respondent told her that he would do the procedure because he was certified in laser hair removal. Patient A said

¹ The statements regarding the Board's investigative findings are intended to provide the Respondent with reasonable notice of the basis of the Board's action. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

² For confidentiality and privacy purposes, the names of patients, health care providers and health care facilities are not disclosed in this document. The Respondent may obtain the identity of the referenced individuals or facilities by contacting the assigned Administrative Prosecutor.

that she was uncomfortable because the procedure was in a “sensitive area,” and she later noticed “drastically different” results compared to when Physician A had performed laser hair removal procedures.

II. BOARD INVESTIGATION

5. The Board opened an investigation based on Patient A’s complaint.

A. Unannounced Site Visit

6. As part of its investigation, Board staff conducted an unannounced site visit at the Practice on or about April 18, 2019.

7. Upon arrival at the Practice at about 11:20 a.m., Board staff observed the Respondent exit a room wearing large sunglasses. The Respondent told Board staff that he would help them soon; he then re-entered the room. Board staff observed that the Respondent was the only Practice staff member present, and a female patient was in the room with him.

8. Once the Respondent and the patient left the exam room, Board staff served the Respondent with subpoenas for appointment logs and an employee list.

9. While Board staff was speaking with the Respondent about the subpoenas, a second patient arrived at the Practice. The Respondent placed this second patient in a second room. He then escorted Board staff into the room where the first patient had been, which contained a “GentleYAG Pro-U” machine, which uses a laser, among other things, to provide skin treatments to improve an individual’s appearance.

10. The Respondent then told Board staff that he was uncomfortable with their presence and would like to wait for Physician A to arrive before he provided any further information. Board staff went to the waiting area in the Practice, where they overheard

the Respondent speaking with the second patient in a room with sounds coming from a machine inside that room.

11. After the second patient left the Practice, Board staff entered the second room and observed a “Vela Shape III” machine, which uses radiofrequency and suction to provide skin treatments to improve an individual’s appearance.

12. By about 12:00 p.m., Physician A was still not at the Practice. Board staff left the Practice to allow the Respondent time to prepare the documents requested in the Board’s subpoenas.

13. Board staff returned to the Practice at or about 1:30 p.m. Physician A had arrived by this time. The Respondent subsequently provided Board staff with copies of the Practice’s appointment logs from January 2018 through April 2019. The Respondent also provided Board staff with the Practice’s employee list, which listed the Respondent and Physician A as the only employees.

B. Appointment Logs

14. As part of its investigation, Board staff reviewed the Practice’s appointment logs that were produced during the unannounced site visit. The appointment logs had the following notations, among others:

- a. Mar. 16, 2018: “[Physician A] needs off”
- b. May 11, 2018: “Honor + Oath Day,” “[Physician A] off”
and “[Physician A] DEFINITELY OUT”
- c. Dec. 14, 2018: “[Physician A] Funeral in N.J.”

15. The appointment log further showed that:

- a. On or about March 16, 2018, the Practice had approximately ten (10) appointments scheduled.

- b. On or about May 11, 2018, the Practice had approximately six (6) appointments scheduled.
- c. On or about December 14, 2018, the Practice had approximately fifteen (15) appointments scheduled.

16. For March 13, 2019, the appointment log showed that Patient A was scheduled at 11:00 a.m. for a “Braz[ilian].” A total of fourteen (14) other patients were scheduled for various cosmetic medical procedures that day. The appointment log did not include notes about Physician A’s whereabouts that day.

17. For April 18, 2019, when Board staff conducted the unannounced visit, the appointment log showed a total of thirteen (13) patients scheduled for various cosmetic medical procedures. Consistent with Board staff’s observations (*see* ¶¶ 7-11, *supra*), the appointment log showed a patient scheduled at 11:00 a.m. for “lip, Braz[ilian], trail,” and another patient scheduled at 11:30 a.m. for “Vela III 1 area.” The appointment log did not include notes about Physician A’s whereabouts that day.

C. Patient Records

18. As part of its investigation, the Board subpoenaed records from the Practice for all patients seen at the Practice when Physician A was either noted or observed as being out of the office (*see* ¶¶ 4, 12, and 14, *supra*), specifically on March 16, May 11, and December 14, 2018, as well as March 13 and April 18, 2019.

19. Each patient record provided to the Board included a treatment log, among other things. The treatment logs listed the number of treatments the patient received, the date of each treatment, laser intensity used for the treatment, and the time of the treatment.

20. These treatment logs showed the following information for the days that Physician A was either noted or observed as being out of the office:

- a. On or about March 16, 2018, at least four (4) patients received laser or radiofrequency skin treatment at the Practice;
- b. On or about May 11, 2018, at least five (5) patients received laser or radiofrequency skin treatment at the Practice;
- c. On or about December 14, 2018, at least seven (7) patients received laser or radiofrequency skin treatment at the Practice;
- d. On or about March 13, 2019, at least ten (10) patients received laser or radiofrequency skin treatment at the Practice; and
- e. On or about April 18, 2019, at least two (2) patients received laser or radiofrequency skin treatment at the Practice at or before 12:00 p.m.

D. Interview of Patient A

21. As part of its investigation, Board staff interviewed Patient A under oath on or about June 19, 2019.

22. Patient A stated during her interview that she received laser hair removal treatment at the Practice several times. She said that she had an established relationship with Physician A, who had performed all her prior treatments.

23. Patient A then described the events of March 13, 2019. She was scheduled with Physician A that day for laser hair removal in Patient A's pubic region. She arrived at the Practice "as normal" and was brought to an exam room by the Respondent. The Respondent left the room, during which time Patient A undressed and draped a towel over herself. The Respondent then walked into the room alone. When Patient A asked where Physician A was, the Respondent told her that Physician A was not in the office and that he would perform the treatment on Patient A. Patient A asked the Respondent about his credentials, and the Respondent stated that he was certified to operate the laser. Patient A ultimately agreed to let the Respondent perform the laser hair removal treatment.

24. Patient A further explained that the Respondent prepared the laser and had Patient A remove the towel and move into an “awkward [and] uncomfortable position,” which was different from the position Physician A usually had her in during the treatment. Patient A described the position as one with her feet together and knees spread apart, making her feel “completely exposed.” Patient A questioned the Respondent about the position, but the Respondent said, “Don’t be shy.” The Respondent then began to reach for Patient A’s vagina without wearing gloves. Patient A asked the Respondent if he was going to wear gloves, to which he replied that he did not have any gloves to put on. The Respondent then “opened up [Patient A’s] labia with his bare hand” and proceeded with the laser hair removal treatment. Patient A said that Physician A wore gloves and usually did not touch her vagina during the treatment.

25. Patient A said that after the treatment was complete, the Respondent did not explain any post-treatment instructions or care.

26. Patient A explained that the treatment that the Respondent performed was not as effective in removing her unwanted hair compared to when Physician A performed the laser hair removal treatment.

E. The Respondent’s Written Response

27. By letter dated June 26, 2019, the Board notified the Respondent that the Board received a complaint alleging that he was practicing medicine without a license and requested that he submit a written response.

28. On or about July 26, 2019, the Board received the Respondent’s written response to the complaint. The Respondent said that he is the “Laser Safety Officer” of the Practice and denied ever representing to others that he was a physician or “any other

health professional.” The Respondent also admitted to operating a laser on a patient, saying that “if there is a question regarding me . . . ever firing the laser on a client, I can only and simply answer yes for training and treatment purposes.”

F. Interview of Physician A

29. As part of its investigation, Board staff interviewed Physician A, under oath, on or about July 29, 2019.

30. Physician A provided the following information about the days when the appointment log noted that she was not at the Practice or when she was directly observed as not being at the Practice:

- a. On March 16, 2018, she was at a family member’s “white coat ceremony” and arrived at the Practice in the afternoon.
- b. On May 11, 2018, she attended a family member’s “honors and oath day” and arrived at the Practice in the afternoon.
- c. On December 14, 2018, she “was scheduled to go to a funeral,” and believed that most of the patients had been rescheduled.
- d. On March 13, 2019, when Patient A received treatment, Physician A “was in the [Practice] so when that group showed up . . . I didn’t open the door because I’m afraid of them actually. And then I heard [the Respondent] come in with them and [they] obviously kind of bullied [the Respondent] into, you know, whatever they wanted[.]”
- e. On the morning of April 18, 2019, when Board staff conducted the unannounced site visit, she was not in the office because she was at a hospital with a family member.

31. Physician A said that while the Respondent should not provide laser hair removal treatment, “I know that he has,” and he has “had [to] this last year and in some emergencies.” Physician A stated that the Respondent has performed laser hair removal procedures on her, and, she believed, on “some of his friends or girlfriends.”

32. Physician A said that she has also witnessed the Respondent perform laser hair removal treatments while she was present at the Practice. Physician A explained that the Respondent performed laser hair removal treatments on patients if those patients did not like Physician A, “because they’re in a package and so it’s like, how do you honor the package?”

33. Physician A estimated that the Respondent performed laser hair removal treatments at the Practice approximately twice per week. Physician A said that the Respondent performed laser hair removal treatments on his adult children as well as on Physician A beginning in 2014 when the Practice opened.

34. When asked about Patient A’s treatment on March 13, 2019, Physician A admitted that she was not in the office and that she knew the Respondent performed laser hair removal treatment on Patient A’s pubic region.

G. Interview of the Respondent

35. As part of its investigation, Board staff interviewed the Respondent, under oath, on or about July 29, 2019.

36. The Respondent said that he opened the Practice with Physician A in 2014 after he obtained “certification” as a “Laser Safety Officer.” The Respondent explained that he is the general business and office manager, while Physician A serves as the only health care provider at the Practice.

37. The Respondent admitted to performing radiofrequency and laser treatment procedures on patients. He explained that he “performed procedures only in emergencies when [Physician A] is not available.” The Respondent also admitted to performing laser hair removal on walk-in patients “if [Physician A] was there and she was busy[.]”

38. The Respondent estimated that he performed one to three procedures per week on patients using a radiofrequency machine in the Practice.

39. The Respondent admitted to performing a laser hair removal treatment on Patient A on March 13, 2019. The Respondent said that Physician A was out of the office that day, "handling an emergency." The Respondent said that Patient A "stands out in my mind" because of her name as well as the conversation he had with her the day she came into the Practice. The Respondent said that he did not offer to have a chaperone present during the treatment with Patient A. He could not recall whether he wore gloves during the treatment.

40. The Respondent said that on the morning of April 18, 2019, when Board staff conducted the site visit, Physician A "was having some issues with [a family member] and they had to take [the family member] to ICU that morning, and that's why she was late getting there[.]" He said that the patient in the room when Board staff arrived "didn't mind me doing the procedure on her, so that's why we did it -- I did it."

41. The Respondent said that since being notified of the Board's investigation, Physician A "is the person that's doing all the procedures." However, when asked to clarify if he was still performing any procedures he answered, "Well, on the laser, yeah, I still do the radiofrequency, the Vela."

CONCLUSIONS OF LAW

Based on the foregoing Investigative Findings, Panel A concludes as a matter of law that the Respondent practiced medicine without a license in violation of Md. Code Ann., Health Occ. § 14-601.

ORDER

Based on the foregoing Investigative Findings and Conclusions of Law, it is, by a majority of the quorum of Panel A, hereby:

ORDERED that pursuant to the authority under by the Maryland Medical Practice Act, Health Occ. § 14-206(e)(1), the Respondent shall **IMMEDIATELY CEASE AND DESIST** from the practice of medicine; and it is further

ORDERED that this order is **EFFECTIVE IMMEDIATELY** pursuant to Md. Code Regs. 10.32.02.13A(2), and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* and Md. Code Regs. 10.32.02.11E(1)(a).

11/05/2019

Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

NOTICE OF OPPORTUNITY FOR A HEARING

The Respondent may challenge the factual or legal basis of this initial order by filing a written opposition, which may include a request for a hearing, within 30 days of its issuance. The written opposition shall be made to: Christine A. Farrelly, Executive Director, Maryland State Board of Physicians, 4201 Patterson Avenue, 4th Floor, Baltimore, Maryland 21215, with copies mailed to: W. Adam Malizio, Assistant Attorney General, Health Occupations Prosecution and Litigation Division, Office of the Attorney General, 300 West Preston Street, Suite 201, Baltimore, Maryland 21201. If the Respondent files a written opposition and a request for a hearing, the Board shall consider that opposition and provide a hearing if requested. If the Respondent does not file a timely written opposition, the Respondent will lose the right to challenge this Initial Order to Cease and Desist and this Order will remain in effect.