

IN THE MATTER OF  
SUZANNE DONITHAN  
Respondent

\* BEFORE THE  
\* MARYLAND STATE BOARD  
\* OF PHYSICIANS  
\* Case Number: 2218-0109

\* \* \* \* \*

**FINAL DECISION AND ORDER**

On June 19, 2018, Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) issued charges against Suzanne Donithan under the Maryland Medical Practice Act. *See* Md. Code Ann., Health Occ. §§ 14-101—14-702. Specifically, Panel B charged Ms. Donithan with violating § 14-601 of the Health Occupations Article, which provides:

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 case was forwarded to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a proposed decision. A hearing was scheduled for January 29, 2019. Ms. Donithan failed to appear on time, and the Administrative Law Judge (“ALJ”) issued a proposed default order. Ms. Donithan filed exceptions, arguing that she was late to the OAH hearing due to inclement weather. Board Disciplinary Panel A (“Panel A”) granted Ms. Donithan’s exceptions and remanded the case back to OAH for a hearing on the merits.

On July 9, 2019, the evidentiary hearing was held at OAH. Ms. Donithan represented herself, and the State was represented by an Administrative Prosecutor from the Office of the Attorney General. On October 2, 2019, the ALJ issued a Proposed Decision, upholding the charge that Ms. Donithan violated § 14-601 by practicing medicine without a license, and

recommended the imposition of a \$3000 civil fine. Neither party filed exceptions to the ALJ's Proposed Decision.

### FINDINGS OF FACT

Panel A adopts the ALJ's Findings of Fact (¶¶ 1 through 12), which are incorporated by reference into the body of this document as if set forth in full. The ALJ's Proposed Decision is attached as Exhibit 1. The findings of fact were proven by the preponderance of evidence.

### CONCLUSION OF LAW

Based upon the Findings of Fact, Panel A concludes that Ms. Donithan practiced medicine in Maryland without being licensed by the Board, in violation of § 14-601 of the Health Occupations Article.

### SANCTION

Section 14-606(a) of the Health Occupations Article provides, in relevant part:

(4) . . . . a person who violates § 14-601 . . . of this subtitle is:

\* \* \*

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

The ALJ carefully considered the appropriate civil fine to be levied upon Ms. Donithan and recommended \$3,000. Panel A agrees with the ALJ's recommendation.

### ORDER

Pursuant to § 14-606(a)(4)(ii) of the Health Occupations Article, it is, by Disciplinary Panel A of the Maryland State Board of Physicians, hereby

**ORDERED** that, within six months from the date of this Final Decision and Order, Suzanne Donithan shall pay a civil fine of \$3,000. The Payment shall be by money order or

bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297; and it is further

**ORDERED** that this is a public document.

01/31/2020  
Date

## *Signature on File*

Christine A. Farrelly, Executive Director  
Maryland State Board of Physicians

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to § 14-408(a) of the Health Occupations Article, Ms. Donithan has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order was sent to the Respondent. The Final Decision and Order was sent on the date of the cover letter accompanying the Final Decision and Order. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If Ms. Donithan petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Ms. Donithan should send a copy of her petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.

# **Exhibit 1**

IN THE MATTER OF  
SUZANNE DONITHAN,  
RESPONDENT,  
BEFORE THE MARYLAND STATE  
BOARD OF PHYSICIANS

\* BEFORE STEPHEN W. THIBODEAU,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MDH-MBP1-79-19-11891  
\* MBP Case No.: 2218-0109

\* \* \* \* \*

PROPOSED DECISION

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED DISPOSITION

On June 18, 2018, the Maryland State Board of Physicians (Board or State) issued Charges under the Maryland Medical Practice Act to Suzanne Donithan (Respondent) for practicing medicine without a license. Md. Code Ann., Health Occ. § 14-101 *et. seq.* (2014 & Supp. 2018). On November 7, 2018, the Board delegated proposed decision-making authority to the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't § 10-205(b) (2014). Initially, a hearing on the merits was scheduled for January 29, 2019. However, at that time the Respondent failed to appear for the hearing and Assistant Attorney General, Michael J. Brown, Administrative Prosecutor, requested a Proposed Default Order against the Respondent which I issued on February 4, 2019. The Respondent filed exceptions with the Board to the Proposed Default Order, and on April 17, 2019 the Board declined to order the Respondent's default and instead remanded the case back to the OAH for a hearing on the merits and at the conclusion of the hearing to issue a proposed decision on the merits to the Board.

On May 13, 2019, I conducted a telephone prehearing conference, and on July 9, 2019, I conducted a hearing on the merits at the OAH at 11101 Gilroy Road, Hunt Valley, Maryland. matters. Mr. Brown appeared for the State, and the Respondent represented herself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for the Board, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); Code of Maryland Regulations (COMAR) 10.32.02; COMAR 28.02.01.

### ISSUES

1. Did the Respondent practice, attempt to practice, or offer to practice medicine in the State of Maryland without being licensed by the Maryland Board of Physicians?
2. If so, is the Respondent subject to a civil fine?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The State presented the following exhibits, which were admitted into evidence:

- |                 |   |
|-----------------|---|
| State's Ex. #1- | Board Investigative Report, March 14, 2018  |
| State's Ex. #2- | Letter from Gretchen Westphal, Compliance Analyst for the Board, to the Respondent, December 15, 2017; copy of anonymous complaint regarding the [REDACTED] in [REDACTED] Maryland, undated |
| State's Ex. #3- | Respondent's Response to the Notice of Investigation, December 30, 2017   |
| State's Ex. #4- | Transcript of Interview of the Respondent, January 11, 2018   |
| State's Ex. #5- | Transcript of Interview of [REDACTED] M.D., October 12, 2017  |
| State's Ex. #6- | Transcript of Interview with [REDACTED] October 16, 2017  |
| State's Ex. #7- | Patient records from the [REDACTED] various dates   |
| State's Ex. #8- | Limited Esthetician Licensure Status of the Respondent, March 13, 2018  |

The Respondent presented the following exhibits, which were admitted into evidence unless otherwise noted:

- Resp. Ex. #1- Page 11 of Proposed Consent Order proposed by the Board to the Respondent, undated (offered, but not admitted)
- Resp. Ex. #2- Printout of a Google search related to Maryland law on laser hair removal from an Outlook email, printed January 30, 2019 (offered, but not admitted)
- Resp. Ex. #3- Definition of "laser hair removal" from "Ask A Surgeon" website, undated
- Resp. Ex. #4- Statement of [REDACTED] cosmetologist and aesthetician for the [REDACTED] [REDACTED] undated

#### Testimony

The State presented the testimony of Gretchen Westphal, Compliance Analyst for the Investigation Unit of the Board.

The Respondent testified on her own behalf and presented the testimony of [REDACTED] her former attorney.

#### FINDINGS OF FACT

After considering the evidence in the record, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Respondent was licensed as an esthetician<sup>1</sup> by the Maryland Board of Cosmetologists. The Respondent was not and has never

<sup>1</sup> Pursuant to COMAR 09.22.01.04, an esthetician license authorizes the person who possesses the license to provide esthetic services as defined by Md. Code Ann., Bus. Occ. and Prof. §5-101(l) (2017), which defines such services as follows:

- "Provide esthetic services" means to provide to an individual, for compensation, the service of:
- (1) cleansing, exfoliating, massaging, stimulating, or performing any other similar procedure on the skin or scalp by electrical, mechanical, or any other means;
  - (2) applying to the face an alcohol, cream, lotion, astringent, or cosmetic preparation; or
  - (3) removing superfluous hair by the use of a depilatory, tweezers, or wax.

been licensed by the Maryland Board of Physicians or the Maryland Board of Nursing in any capacity.

2. From approximately June 2016 through July 2017, the Respondent was employed part-time as an esthetician at [REDACTED] a spa facility in [REDACTED] Maryland, providing various services including medical and cosmetic injections, laser hair removal, facials, esthetics, and weight-loss management.

3. [REDACTED] was owned and operated by [REDACTED] and [REDACTED].

[REDACTED] M.D. Dr. [REDACTED] was the supervising physician and medical director at [REDACTED] for all medical procedures.

4. The Respondent, along with another esthetician, [REDACTED] performed several laser treatments at [REDACTED]. These included intense pulsed light (IPL) treatments,<sup>2</sup> i-LIPO,<sup>3</sup> and laser hair removal. The Respondent and Ms. Kim were trained and received certifications for the equipment they used in these procedures.

5. In many cases, the Respondent performed some or all of these procedures without Dr. [REDACTED] present.

6. The Respondent and Ms. [REDACTED] were told by Mr. [REDACTED] that they could perform laser hair removal without Dr. [REDACTED] present.

7. The Respondent performed unsupervised laser hair removal on [REDACTED] patients on at least three occasions.

<sup>2</sup> IPL treatments and therapy are used to improve the texture and color of one's skin. "What is Intense Pulsed Light (IPL) Treatment?", <https://www.webmd.com/beauty/intense-pulsed-light-treatment-overview#1>, last accessed September 30, 2019.

<sup>3</sup> i-LIPO is a technique of using lasers in order to smooth cellulite, reduce fat cells, and shape and sculpt body parts. "i-Lipo: Body Contouring and Laser Lipolysis System," <https://www.liposuction.com/lipo.html>, last accessed on September 30, 2019.



8. The Respondent treated Patient [REDACTED] (Patient 1) with laser hair removal on October 22, 2016. Specifically, the Respondent performed laser hair removal on Patient 1's shoulder.

9. The Respondent treated Patient [REDACTED] (Patient 2) with laser hair removal on December 8, 2016. Specifically, the Respondent performed a "Brazilian" laser hair removal procedure around Patient 2's bikini area.

10. The Respondent treated Patient [REDACTED] (Patient 3) with laser hair removal on June 29, 2016. Specifically, the Respondent performed laser hair removal on Patient 3 around Patient 3's chin, bikini, and lower leg area.

11. In each instance, each of these patients signed a "Laser Hair Removal Consent Form," which contained the following language:

"I understand that the procedure is performed by a certified laser therapist, trained and supervised by Dr. [REDACTED]. At your first visit with [REDACTED], Dr. [REDACTED] will meet with you to discuss the procedure, explain the treatment plan and answer all questions that you may have. Dr. [REDACTED] may not be physically overseeing your follow up treatments; however he will be available upon request to fulfill all concerns you may have."

12. The Respondent was unaware of the legal requirements to perform laser hair removal procedures in the State of Maryland.

## DISCUSSION

### Charges and Law

The Respondent is charged by the Board with practicing medicine without a license. The Respondent is charged under the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101 *et. seq.* (2014 Repl. Vol. & 2017 Supp.). Specifically, under Health Occ. § 14-601:

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.

<sup>4</sup> At the hearing the State identified each of the patients by name. I have used initials here to protect each Patient's confidentiality.

Health Occ. § 14-101 defines the practice of medicine in pertinent part as follows:

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

- (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 [.]

A person who violates section 14-601 is subject to a possible civil fine of up to \$50,000.00.

Health Occ. § 14-606(4)(ii).

The Board further regulates cosmetic medical procedures through COMAR 10.32.09.

Specifically, "cosmetic medical device" and "cosmetic medical procedure" are defined as follows pursuant to COMAR 10.32.09.02B:

(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;

(5) Cosmetic Medical Procedure

(a) "Cosmetic medical procedure" means a procedure using a cosmetic 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;
- (iv) Skin treatments with phototherapy;
- (v) Any treatment using a cosmetic medical device for the purpose of improving an individual's appearance.

In addition, the Board outlines the necessary qualifications for an individual who may be "delegated or assigned" to perform a cosmetic medical procedure pursuant to COMAR

10.32.09.04A:

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.

Finally, on October 30, 2002, the Board issued Declaratory Ruling 00-1 regarding the use of lasers for hair removal. Specifically, the Board ruled the following:

The use of lasers for hair removal is a surgical act. Only physicians, certified nurse practitioners, registered nurses pursuant to the Board of Nursing Declaratory Ruling 97-1, and physician assistants may use lasers for hair removal.

There is no dispute to the essential and material facts of this case on the issue of whether the Respondent practiced medicine without a license. Indeed, at the hearing, the Respondent admitted to performing laser hair removal procedures on three patients, without supervision and without the necessary licensing requirements. As such, the Respondent did in fact practice medicine without a license pursuant to the relevant statute, regulations, and declaratory rulings of the Board as outlined above. The only issue in this case relates to the mitigation of the Respondent's conduct and what the appropriate penalty should be.

To that end, the Board's regulations provide some guidance; specifically COMAR 10.32.02.09C, which provides for fines for practicing medicine without a license. COMAR 10.32.02.09C(2) states that the following factors to determine the amount of the fine include, but are not limited to, the following:

- The extent to which the respondent derived any financial benefit from the improper conduct;
- The willfulness of the improper conduct;

- The extent of actual or potential public harm caused by the improper conduct; and
- The deterrent effect of the fine.

In this case, there is no dispute that the Respondent knew she was not a licensed doctor, certified nurse practitioner, registered nurse, or physician's assistant. She was, however, a licensed esthetician by the Maryland Board of Cosmetologists. As such, while she was licensed to provide skin treatments under Maryland law, including by "mechanical, electrical, or other means" pursuant to Bus. Occ. and Prof. § 5-101(I), such treatment did not extend to laser hair treatments that are otherwise regulated by the Maryland Board of Physicians. The Respondent did not know that the laser treatments she performed were not covered by her esthetician's license and were otherwise regulated by the Board and that performing such procedures constituted the practice of medicine. I consider this first and foremost in my assessment of a proposed fine. While the Board regulations and statute are clear that laser hair treatments constitute the practice of medicine, the law regarding the Respondent's esthetician's license could have led her to reasonably believe that she could perform laser hair treatments with her license, in particular the provision in statute that states she could provide skin treatments by "mechanical, electrical, or other means." I therefore accept the Respondent's claim as credible that she had no idea that laser hair removal, in the State of Maryland, was considered a medical procedure that required proper Board licensing.

As for the factors specifically outlined in the Board's regulations, the first factor is the extent to which the Respondent derived financial benefit from her conduct. That is unclear in the record. Indeed, the State presented evidence that the Respondent worked part-time for the [REDACTED] but did not present evidence as to what the Respondent earned for her work at [REDACTED]. Nor did the State present evidence to prove the Respondent earned more for performing the laser hair treatments, or extra when she did perform the treatments.

In terms of the Respondent's willfulness of the improper conduct, the second factor for me to consider, as outlined above, I find no evidence that the Respondent was attempting to willfully practice medicine without a license. Indeed, she testified multiple times that she had no idea that a medical license was required to perform any laser hair procedures; that the law in her home state of Virginia is different in that estheticians are allowed to perform the procedure without a medical license; and she thought Dr. [REDACTED]'s license covered her work at [REDACTED].

[REDACTED] The State provided no credible evidence that the Respondent willfully attempted to practice medicine without a license.

As to the actual or potential effect of public harm caused by the Respondent's improper conduct, the record is again devoid of any evidence of actual or potential harms caused by the Respondent. The State presented, and was able to prove, three instances in which the Respondent performed laser hair removal on patients. However, there was no indication any of those patients experienced any harm or were potentially harmed in any way. Moreover, the State did not present evidence regarding actual or potential effect of public harm caused by the Respondent overall regarding her conduct while working at [REDACTED]. However, I do infer generally that there is an actual or potential effect of public harm for laser hair treatments to be performed by unlicensed individuals such as the Respondent, based upon the Board's regulations requiring a medical license to perform the procedure.

Finally, as to the deterrent effect of any fine imposed, I do consider such an effect to be in the Board's interest, in particular due to the Respondent's confusion regarding her own licensing status and whether she was legally able to perform laser hair removal procedures without a medical license. Therefore, any fine imposed should provide a sufficient deterrent against such conduct in the future.

COMAR 10.32.02.09C provides the following in determining the appropriate range of fines to be imposed in cases for the unauthorized practice of medicine:

(3) Range of Fines Imposed.

(a) Except as specified in §C(3)(b) of this regulation, the Board may impose fines as follows:

(i) For the first violation, not less than \$1,000 and not more than \$30,000;

(ii) For the second violation, not less than \$10,000 and not more than \$40,000; and

(iii) For the third violation, not less than \$15,000 and not more than \$50,000.

(b) If the conduct resulted in harm to any patient, the Board may consider each patient seen to be a separate violation when imposing a fine listed in §C(3)(a) of this regulation.

At the hearing, the State provided no evidence to suggest this was a second or subsequent violation by the Respondent. I therefore find that, based on the record before me, this was the first time the Respondent has violated the law with respect to the unauthorized practice of medicine. Moreover, I do not find, based on the record before me, that Patients 1, 2, and 3 were harmed in any way by the Respondent. No evidence was presented as to harm to those patients, and the State did not argue that any of the patients were harmed. Therefore, COMAR 10.32.02.09C(3)(b) is inapplicable in this case, and I will not treat each patient as a separate violation. Therefore the appropriate range for assessing a penalty against the Respondent for a first violation is between \$1,000.00 and \$30,000.00.

At the hearing, the State did not recommend a monetary amount for any penalty against the Respondent. Therefore, in weighing all the factors discussed above, I find the Respondent demonstrated that she honestly did not intend to violate the law regarding unauthorized practice of medicine and was merely trying to practice her profession as an esthetician. She simply misunderstood the applicable law in Maryland. Given the lack of evidence of harm to any patient, the lack of willful conduct on the part the Respondent, and cognizant of the need to deter such conduct, willful or not, in the future, I recommend a penalty at the lowest end of the range

mandated by regulation - \$1,000.00 for each patient the Respondent treated - for a total of \$3,000.00.

### CONCLUSIONS OF LAW

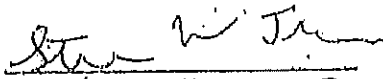
Based on my analysis herein, I conclude that the State has established that the Respondent did practice medicine without a license in violation of section 14-601 of the Health Occupations article with respect to Patients 1, 2, and 3. Md. Code Ann., Health Occ. § 14-101(o)1-2; COMAR 10.32.09.02B. Therefore, I recommend that she be subject to a civil penalty in the amount of \$3,000.00.

### PROPOSED DISPOSITION

I PROPOSE that the charges filed by the Board on June 19, 2018 against the Respondent be UPHELD.

I PROPOSE that the Board fine the Respondent \$3,000.00.

October 2, 2019  
Date Decision Mailed

  
Stephen W. Thibodeau JLC  
Administrative Law Judge

SWT/dhm  
#182221

### NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions, in writing, to this Proposed Decision with the Board of Physicians within fifteen days of receipt of the decision. Md. Code Ann., State Gov't § 10-216 (2018) and COMAR 10.32.02.05B. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

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