

IN THE MATTER OF	*	BEFORE THE MARYLAND
HANWOOL KIM	*	STATE BOARD OF
Respondent	*	PHYSICIANS
Unlicensed	*	Case Number: 2218-0110B

CONSENT ORDER

On June 19, 2018, the Maryland State Board of Physicians (the “Board”) charged **HANWOOL KIM** (the “Respondent”), with violating the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”), §§ 14-101 et seq. (2014 Repl. Vol. & 2017 Supp.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

Health Occ. § 14-601. License required to practice medicine.

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.

Health Occ. § 14-606. Fines and penalties.

...

(4) Except as provided in paragraph (5) of this subsection, 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 a disciplinary panel.

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 [.]

The pertinent provisions of the Board's regulations under Md. Code Regs. ("COMAR") 10.32.09 provide:

.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 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;

...

(v) Skin treatments with phototherapy

(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.

BOARD'S DECLARATORY RULING

On October 30, 2002, the Board issued Declaratory Ruling 00-1 "Re: The use of lasers¹ for hair removal." The Board issued the Declaratory Ruling at the request of the Maryland Board of Electrology, which petitioned the Board to rule on the delegation of

¹ Light Amplification by Stimulated Emission of Radiation.

laser hair removal device services by physicians to non-physicians. In a seven page decision, the Board ruled:

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

In the Declaratory Ruling, the Board defined Laser as:

A device which transforms light of various frequencies into an extremely intense, small, and nearly nondivergent beam of monochromatic radiation in the visible region with all the waves in phase. Capable of mobilizing immense heat and power when focused at close range, it is used as a tool in surgical procedures, in diagnosis, and in physiologic studies.²

As part of the Board's analysis, the Declaratory Ruling stated:

...Several lasers and light sources have recently been developed for hair removal. These devices destroy the hair follicle based on the theory of selective photothermolysis.

The American Medical Association ("AMA"), in AMA policy H-475.983 adopts the following definition of 'surgery' from American College of Surgeons Statement ST-11:

Surgery is performed for the purpose of structurally altering the human body by the incision or destruction of tissues and is part of the practice of medicine. Surgery also is the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transposition of live human tissue which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reductions for major dislocations or fractures, or otherwise altered by mechanical, thermal, light-based, electromagnetic, or chemical means [.]

AMA policy H-475.989 states in pertinent part:

² Cited by I. Dorland, W.A. Newman, Dorland's Illustrated Medical Dictionary, 28th Ed., W. B. Saunders Co., Philadelphia (1994).

Laser surgery should be performed only by individuals licensed to practice medicine and surgery or by those categories of practitioners currently licensed by the state to perform surgical services[.]

...

FINDINGS OF FACT

The Board makes the following Findings of Fact:

I. BACKGROUND

1. At all times relevant, the Respondent has not been licensed or certified by the Maryland Board of Physicians or the Maryland Board of Nursing in any capacity, and has never been licensed or authorized to use cosmetic medical devices or perform cosmetic medical procedures in Maryland.
2. At all times relevant the Respondent was licensed as a cosmetologist by the Maryland Department of Labor, Licensing and Regulation (“DLLR”). This license expires on October 20, 2019.
3. At all times relevant, the Respondent was employed as an esthetician under the ostensible supervision of a physician at a cosmetic medical office (“Facility 1”)³.
4. On or about October 25, 2016, the Board received an anonymous complaint alleging the unlicensed practice of medicine at Facility 1.

II. BOARD INVESTIGATION

³ To ensure confidentiality and privacy, the names of individuals and facilities involved in this case, other than the Respondent, are not disclosed in this document.

5. On or about August 17, 2017, Board staff conducted an unannounced site-visit to Facility 1. Dr. P was not present at the time of the visit. The Respondent was in the laser room with a patient at the time of Board staff's arrival. After finishing up with the patient, the Respondent indicated to Board staff that she and another esthetician both perform laser hair removal and IPL⁴, and escorted Board staff to the laser room. The Board's staff noticed the odor of burnt hair inside the laser room in which the patient had just been treated.
6. On or about August 21, 2017, the Board issued an initial contact letter and a subpoena *duces tecum* for appointment logs and employee records to Dr. P at Facility 1.
7. On or about August 25, 2017, Board staff received Dr. P's written response to the initial contact letter. In his written response Dr. P stated that he had been formerly employed at Facility 1, and that he supervised laser hair removal clients and technicians during his time there. Dr. P did not provide any materials that were responsive to the issued subpoenas as he indicated that he did not have access to that information.
8. On or about January 11, 2018, Board staff conducted an interview with the Respondent under oath regarding the allegations. During the interview the Respondent indicated that she worked at Facility 1, and that she began her employment there in April 2016.

⁴ Intense Pulsed Light (IPL) uses the emission of broad spectrum light through intense pulses to improve the appearance of skin and for hair removal.

9. The Respondent stated that during her tenure at Facility 1, she worked as an esthetician, and received training on how to conduct laser procedures.
10. The Respondent stated that she worked alongside other estheticians under the supervision of Dr. P. The Respondent acknowledged that she regularly performed laser hair removal on patients at Facility 1 with Dr. P's supervision, and sometimes when Dr. P was not physically present at Facility 1.

III. PATIENT-SPECIFIC FINDINGS

11. The Respondent, as an esthetician and laser "technician" at Facility 1, performed laser hair removal procedures as set forth in-part below, constituting the unauthorized practice of medicine. The following represents a small sampling of the women and men who received cosmetic medical treatments conducted by the Respondent under the supervision of Dr. P.

PATIENT 1

12. On or about July 23, 2016, Patient 1, a female in her 40's, presented to Facility 1 for cosmetic procedures including laser hair treatment.
13. During Patient 1's initial visit she signed the Laser Hair Removal Consent Form. The last paragraph of this form includes the following statement:

I understand that the procedure is performed by a certified laser therapist, trained and supervised by [Dr. P]...[Dr. P] may not be physically overseeing your follow-up treatments; however he will be available upon request[.]

14. On or about July 23, 2016, the Respondent performed laser hair removal on Patient 1's lower leg area.

PATIENT 2

15. On or about December 18, 2015, Patient 2, a female in her 30's, presented to Facility 1 for cosmetic procedures including laser hair treatment.
16. During the course of her initial visit, Patient 2 signed the Laser Hair Removal Consent Form.
17. On or about the dates of April 28, 2017, May 26, 2017, and June 30, 2017, the Respondent performed laser hair removal on Patient 2's neck and chin areas.

PATIENT 3

18. On or about December 18, 2014, Patient 3, a female in her 20's, presented to Facility 1 for cosmetic procedures including laser hair removal.
19. During the course of her treatment period Patient 3 signed the Laser Hair Removal Consent Form.
20. On or about July 21, 2016, the Respondent performed laser hair removal on Patient 3's underarm, legs, and bikini area.

PATIENT 4

21. On or about June 20, 2015, Patient 4, a male in his 30's, presented to Facility 1 for cosmetic procedures including laser hair removal.

22. During his initial visit, Patient 4 signed the Laser Hair Removal Consent Form.
23. On or about May 5, 2016, and June 16, 2016, the Respondent performed laser hair removal on Patient 4's upper back area.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's use of cosmetic medical devices and performance of cosmetic surgical procedures, including but not limited to, laser hair removal on at least four occasions between April 2016 and July 2016, constitute practicing medicine without a license, in violation of Health Occ. §14-601.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of the Board considering this case:

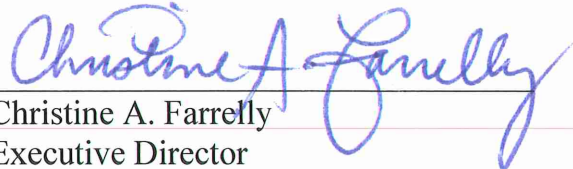
ORDERED that the Respondent shall **CEASE AND DESIST** from practicing, attempting to practice, or offering to practice medicine in this State; and it is further

ORDERED that within **ONE (1) YEAR** the Respondent shall pay a civil fine in the amount of **ONE THOUSAND DOLLARS (\$1,000)**. 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 the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

11/28/2018
Date


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Hanwool Kim, acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive these rights and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered 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 their behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

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

11/19/18
Date

Signature on File
Hanwool Kim

NOTARY

STATE OF MARYLAND

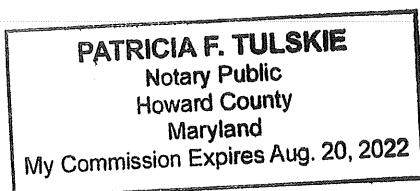
CITY/COUNTY OF Howard

I HEREBY CERTIFY that on this 19 day of November,
2018, before me, a Notary Public of the foregoing State and City/County
personally appear Hanwool Kim and made oath in due form of law that signing
the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Notary Public



My commission expires:

08 / 20 / 2022