

IN THE MATTER OF * **BEFORE THE MARYLAND**
MARIANNA ATANASSON * **STATE BOARD OF**
Respondent * **PHYSICIANS**
Unlicensed * **Case Number: 2013-0966**

CONSENT ORDER

On September 30, 2013, the Maryland State Board of Physicians (the “Board”) charged Marianna Atanasson (the “Respondent”), under the Maryland Medical Practice Act (the “Act”), Md. Code Ann. Health Occ. (“Health Occ.”) § 14-101 et seq. The Respondent was charged under the following provisions of the Act:

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.

Health Occ. § 14-606 provides in pertinent part:

...

(4) Except as provided in paragraph (5) of this subsection,¹ 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 the Board.

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

(n) Practice medicine. -- (1) “Practice medicine” means to engage, with or without compensation, in medical:

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

...

- (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. 10.32.09 provides in pertinent part:

.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 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;
- (ii) Skin treatments using radio frequencies, microwave, or electric pulses;

...

.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 lasers² for hair removal." The Board issued the Declaratory Ruling at the request of the Maryland Board of Electrology, who petitioned the Board to rule on the delegation of laser hair removal devices 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:

² Light Amplification by Stimulated Emission of Radiation.

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.³

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.

Additionally, the Board relied on the American Medical Association's ("AMA's") opinions on laser surgery for support. AMA policy H-475.988 states in pertinent part:

The AMA supports the position that evision, destruction, incision or other structural alteration of human tissue using a laser is surgery...

AMA policy H-475.989 states in pertinent part:

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.

...

On February 12, 2014, Disciplinary Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

Disciplinary Panel A finds the following:

³ Cited by I. Dorland, W.A. Newman, Dorland's Illustrated Medical Dictionary, 28th Ed., W. B. Saunders Co., Philadelphia (1994).

GENERAL FINDINGS

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.
2. At all times relevant, the Respondent was and has been licensed as an esthetician, by the Maryland Board of Cosmetology.⁴
3. At all times relevant to these charges, the Respondent was employed at Medi-Spa A, in Clarksville, Maryland.⁵
4. On or about April 25, 2013, the Board received a complaint from a physician alleging that the Respondent and other employees at Medi-Spa A had been performing laser hair removal procedures without being licensed.
5. Shortly after receiving the complaint, the Board opened an investigation.
6. On or about May 14, 2013, the Board's staff conducted an on-site visit of Medi-Spa A. During the on-site visit, the Board's staff conducted interviews of the Respondent and two other employees.
7. On or about July 11, 2013, the Respondent filed a written response with the Board acknowledging that she had been performing "[Intense Pulsed Light] ("IPL") hair removal," and stating that as of June 1, 2013, she had been "instructed" not to continue treating any hair removal clients due to a "clarification in licensing."
8. Pursuant to a subpoena issued by the Board, Med-Spa A provided to the Board an appointment log for the period from November 1, 2012 through May 14, 2013. During that six month period, the log revealed there were 177 appointments that

⁴ With regard to hair removal, an esthetician's scope of practice includes only "removing superfluous hair by the use of a depilatory, tweezers, or wax." Md. Bus. Occ. & Prof. Code Ann. § 5-101(l)(3).

⁵ In order to maintain confidentiality, neither facility nor patient names will be used in these Charges.

had been scheduled for the Respondent to conduct laser hair removal procedures.

INTERVIEW OF THE RESPONDENT

9. On May 14, 2013, the Board's staff conducted an interview of the Respondent under oath. During the interview, the Respondent acknowledged that she had been performing laser hair removal procedures at Medi-Spa A since September 2012.
10. The Respondent stated that she was a nurse licensed in Germany; however, acknowledged that she was not licensed in Maryland.

PATIENT-SPECIFIC FINDINGS

The following patients represent a small sampling of women who received hair removal treatments through use of either a laser or IPL conducted by the Respondent:

PATIENT A

11. In October 2012, Patient A was a female in her 30's when she presented to Medi-Spa A for laser hair removal of her underarm area.
12. On the following dates, the Respondent performed laser hair removal treatments on Patient A: November 20, 2012 and December 19, 2012.

PATIENT B

13. In May 2012, Patient B was a female in her 40's when she presented to Medi-Spa A for laser hair removal of her underarm area.
14. Patient B received five laser hair removal treatments between May and October 2012 from providers other than the Respondent.

15. On December 6, 2012, the Respondent conducted the sixth laser hair removal treatment on Patient B.

PATIENT C

16. In December 2012, Patient C was a female in her 30's when she presented to Medi-Spa A for laser hair removal of her underarm area.
17. On December 31, 2012, the Respondent performed Patient C's initial laser hair removal treatment.

PATIENT D

18. In January 2013, Patient D, a female (with an undocumented date of birth) presented to Medi-Spa A for laser hair removal of her underarm area.
19. On January 15, 2013, the Respondent performed Patient D's initial laser hair removal treatment.

PATIENT E

20. In December 2012, Patient E was a female in her 20's when she presented to Medi-Spa A for laser hair removal of her nipple area.
21. On the following dates, the Respondent performed laser hair removal treatments on Patient E: December 13, 2012 and January 10, 2013.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A concludes as a matter of law that the Respondent's actions as outlined above constitute a violation of Health Occ. § 14-601.

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent shall pay a monetary fine in the total amount of one thousand dollars (\$1,000.00). The payment or payments shall be by certified or bank guaranteed check(s) made payable to the Maryland State 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

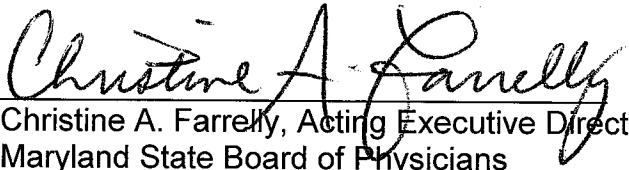
ORDERED that the total amount of \$1,000.00 shall be paid in full on or before one year from the date of this Consent Order, and shall constitute a condition of this Consent Order; and it is further

ORDERED that the Respondent's failure to pay the \$1,000 in full on or within one year of the date of this Consent Order shall be considered a violation of this Consent Order; and Disciplinary Panel A, in its discretion, after notice and opportunity for a show cause hearing before Disciplinary Panel A or an evidentiary hearing at the Office of Administrative Hearings, may impose an additional monetary fine; and it is further

ORDERED the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann. State Gov't § 10-611 et seq.

4/7/14
Date


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

CONSENT


I, Marianna Atanasson, acknowledge that I am representing myself in these proceedings. I have been advised of my right to be represented by the attorney of my

choice throughout proceedings before Disciplinary Panel A, including the right to counsel with an attorney prior to signing this Consent Order. I have knowingly, willfully and intelligently waived my right to be represented by an attorney before entering into this Consent Order. By this Consent and for the 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 Disciplinary Panel A 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 Disciplinary Panel A that I might have filed after any such hearing.

I sign this Consent Order after knowingly, willfully and intelligently waiving my right to be represented by an attorney, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

04-03-2014
Date



Marianna Atanasson

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 3rd day of April, 2014,
before me, a Notary Public of the foregoing State and City/County personally appeared
Marianna Atanasson, 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 notarial seal.

Gloria Jones Br...
Notary Public



Commission expires: 3/9/17