

IN THE MATTER OF * BEFORE THE MARYLAND
FELICIA BRENNER * STATE BOARD OF
Respondent * PHYSICIANS
Unlicensed * Case Number: 2014-0607

CONSENT ORDER

On or about January 23, 2014, the Maryland State Board of Physicians (the “Board”) opened an investigation of **Felicia Brenner** (the “Respondent”) under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 et seq.

Based on its investigation, the Board has grounds to charge the Respondent under the following provision 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. § 14-101 defines the practice of medicine in pertinent part as follows:

(l) Practice medicine. -- (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[.]

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 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 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.

¹ Light Amplification by Stimulated Emission of Radiation.

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

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.

...

Prior to the Board issuing charges, the Respondent agreed to enter into this public Consent Order with the Board's approval, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following:

1. At all times relevant, the Respondent has not been licensed or certified by the Maryland State Board of Physicians or the Maryland Board of Nursing in any capacity.
2. At all times relevant, the Respondent was licensed as an esthetician, by the Maryland Board of Cosmetology.³
3. At all times relevant, the Respondent was employed at Facility A in Baltimore, Maryland.

³ 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. Code Ann., Bus. Occ. & Prof. § 5-101(l)(3).

4. At all times relevant, Facility A was owned and operated by a licensed physician (“Dr. K”).
5. The Respondent has been employed as an esthetician by Dr. K at Facility A from 2002 through the present.
6. On or about January 23, 2014, the Board received a complaint from a patient (“Patient A”) who had been treated by the Respondent at Facility A. Patient A alleged that on September 24, 2012, at Facility A, the Respondent performed an Intense Pulsed Light (“IPL”)⁴ procedure on her chest. Patient A subsequently underwent several corrective procedures by a provider at another practice to reduce the grid-like pattern on her chest.
7. Patient A further alleged that she had not been informed of the risks of the IPL procedure by the Respondent or Dr. K.
8. On or about April 3, 2014, the Board’s staff made an unannounced site visit to Facility A. During the site visit, the Board’s staff interviewed Facility A’s Office Administrator, the Front Desk Coordinator and the Patient and Surgical Coordinator. Each person interviewed acknowledged that the Respondent had performed cosmetic medical procedures at Facility A including laser hair removal, IPL and fractional pixel therapy (“pixel”).⁵
9. By letter dated April 3, 2014, the Board notified the Respondent it had opened an investigation into the allegations cited by Patient A in her complaint, and requested a written response.

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

⁵ A laser handpiece that provides fractional ablative therapy for skin rejuvenation purposes.

10. By letter dated April 15, 2014, the Respondent submitted a written response to the Board stating, "I believe it was done appropriately and without 'scarring' to [Patient A]." The Respondent further stated that she would no longer be performing cosmetic medical procedures or be utilizing cosmetic medical devices.
11. On May 19, 2014, the Board's staff conducted an interview of the Respondent under oath regarding allegations of her unauthorized practice of medicine under Dr. K's supervision. The Respondent acknowledged that she had performed cosmetic procedures including IPL; however, on notification of the Board's investigation, stated that she is no longer conducting any cosmetic medical procedures.
12. On May 19, 2014, the Board's staff conducted an interview of Dr. K under oath regarding allegations of the Respondent's unauthorized practice of medicine under Dr. K's supervision. Dr. K acknowledged that prior to the Board's investigation the Respondent had performed IPL and laser hair removal procedures.

PATIENT-SPECIFIC FINDINGS

13. Dr. K, as owner/medical director of Facility A and supervisor of the Respondent, hired the Respondent to perform the cosmetic medical procedures as outlined in pertinent part below, and was aware that the Respondent performed the cosmetic medical procedures. The following patients represent a small sampling

of women who received cosmetic medical treatments conducted by the Respondent.

PATIENT A

14. In November 2008, Patient A was a female in her forties when she initially presented to Facility A for cosmetic skin care. Between November 2008 and September 24, 2012, Patient A received cosmetic procedures including facials, microdermabrasion, pixel treatments (to the back of Patient A's hands) and Botox injections. According to Patient A, the Respondent primarily provided the facials, microdermabrasion and pixel treatments and Dr. K administered the Botox injections.
15. On September 24, 2012, Patient A presented for an appointment for microdermabrasion with the Respondent and signed a Consent form that was entitled, "Superficial Epidermal Exfoliation Therapies."
16. On September 24, 2012, after the Respondent performed the microdermabrasion procedure on Patient A's face, she subsequently performed IPL of Patient A's chest and hands, and a pixel procedure to her face.
17. Patient A did not give informed consent for the IPL or pixel procedures conducted on September 24, 2012.⁶
18. The Respondent documented that Patient A was two weeks "out" from antibiotic

⁶ Dr. K stated in his written response to the complaint that he was present in the office on September 24, 2012. Patient A, however, stated that Dr. K was not present in the treatment room, nor did she see him during that visit.

use and had a “lot of sun damage to her chest area.”⁷

19. Postoperatively the Respondent provided Patient A with ice to place on her chest area. Patient A recalled that she experienced excruciating pain.
20. On October 5, 2012, eleven days after the procedure, Patient A’s chest area was scarred with grid-like markings.
21. On October 6, 2012, Patient A made an appointment to see Nurse A at Facility A as Dr. K did not see patients on Saturdays. Nurse A advised Patient A not to have any additional laser treatments to her chest and recommended a lightener exfoliator.
22. On October 12, 2012, Patient A met with Dr. K and the Office Administrator to discuss the recommended follow-up care for her chest area.
23. Patient A sought a second opinion from Physician A and Dr. K agreed to pay for the corrective treatment. To date, Patient A has undergone multiple corrective procedures through Physician A’s office and used lightening creams. There has been improvement, however, scarring still remains.

PATIENT B

24. Patient B was a female in her thirties when she presented to Dr. K’s practice in February 2011 for a liposuction consultation.
25. Patient B received several cosmetic procedures through March 2014 including liposuction, breast augmentation, Botox, facial filler, microdermabrasion and laser hair removal.

⁷ Patient A stated during her March 20, 2014 interview conducted by the Board’s staff that Ms. B never asked her about her antibiotic use.

26. The Respondent performed laser hair removal of Patient B's underarm area on: September 19 and October 19, 2012; and the following dates in 2013: January 18; March 1; April 15 and July 31.

PATIENT C

27. Patient C was a female in her teens when she presented to Dr. K's practice on January 23, 2013 for laser hair removal of her legs and bikini area.
28. The Respondent performed laser hair removal for Patient C on five occasions in 2013: January 23; March 8; June 19; August 16 and November 26.

PATIENT D

29. Patient D was a female in her sixties when she presented to Dr. K's practice in November 2012 for cosmetic skin care. She received photofacials, IPL treatments, laser treatments, and Botox injections through January 2013.
30. On January 4, 2013, the Respondent conducted an IPL treatment to Patient D's face for brown pigment issues.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated Health Occ. § 14-601, pursuant to the Board's regulations under Md. Code Regs. 10.32.09.04A.

ORDER

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

ORDERED that within **THIRTY (30) DAYS** of the date of this Consent Order, the Respondent shall pay a monetary fine in the total amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)**. The payment shall be made 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 Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. vol. & 2013 Supp.).

10/10/2014
Date

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

CONSENT

I, Felicia Brenner, acknowledge that I am represented by counsel and have consulted 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 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 the Board that I might have filed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

10-2-14
Date

Felicia Brenner
Felicia Brenner

Reviewed and Approved by:

Neal M. Brown
Neal M. Brown, Esquire

STATE OF MARYLAND

CITY/COUNTY OF:

I **HEREBY CERTIFY** that on this 2 day of OCTOBER, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared Felicia Brenner and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Holly Anne Boeller
Notary Public

My commission expires:

11/18/17

