

IN THE MATTER OF * **BEFORE THE MARYLAND**
HULYA DANIEL * **STATE BOARD OF**
Respondent * **PHYSICIANS**
Unlicensed * **Case Number: 2013-0910**

CONSENT ORDER

On October 2, 2013, the Maryland State Board of Physicians (the "Board"), charged Hulya Daniel (the "Respondent"), under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 14-101 et seq. The pertinent provisions of the Act provide the following:

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:

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

(n) 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...

Code Md. Regs. tit. 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:
 - (ii) Skin treatments using lasers;
 - (iii) Skin treatments using intense pulsed light;
 - (iv) Skin treatments using radio frequencies, microwave, or electric pulses;
 - (v) Deep skin peels;
 - (vi) Skin treatments with phototherapy;
 - (vii) Microdermabrasion;
 - (viii) Subcutaneous, intradermal, intramuscular injections of medical products;
 - (ix) Treatments intended to remove or cause destruction of fat; and
 - (x) Any treatment using a cosmetic medical device for the purpose of improving and 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 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:

² Light Amplification by Stimulated Emission of Radiation.

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.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

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

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:

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 has been licensed as an esthetician by the Maryland Board of Cosmetology.⁴
3. At all times relevant to these charges, the Respondent was the owner of Medi-Spa A⁵ located in Clarksville, Maryland, which opened in June 2011.⁶ According to the Respondent, Dr. F had served as medical director of Medi-Spa A from May through July 2012, and effective June 1, 2013, Dr. B assumed the role of Medical Director.
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. The Respondent was not present during the on-site visit. The Board's

⁴ Laser hair removal is not within the scope of an esthetician's practice. The Board of Cosmetology's regulations provide that 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).

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

⁶ In June 2013, the Respondent opened a second location in Bethesda, Maryland.

staff conducted interviews of three of the Respondent's employees, one of whom was charged by the Board with the unauthorized practice of medicine for performing laser and/or Intense Pulsed Light ("IPL") hair removal procedures.⁷

7. By letter dated May 31, 2013, the Board's staff notified the Respondent it had opened a full investigation into the allegation that she was practicing medicine without a license and with an unauthorized person(s) or aiding an unauthorized person, in violation of the Medical Practice Act.
8. On or about June 21, 2013, the Respondent submitted a written response to the Board, through her attorney, stating that all laser hair removal procedures had been performed by Registered Nurses.
9. On or about June 24, 2013, the Board's staff conducted an interview of the Respondent under oath, which is set forth in pertinent part below
10. 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 over 100 patient appointments that had been scheduled for the Respondent to conduct laser hair removal.

INTERVIEW OF THE RESPONDENT

11. During the Board's staff's interview, the Respondent stated that she had terminated the medical director (Dr. F) because he was not available when needed. She acknowledged that she and three other employees who were not

⁷ The Board charged MA with the unauthorized practice of medicine, in Case # 2013-0966.

licensed by the Board or by the Maryland Board of Nursing had performed laser hair removal at Medi-Spa A.

12. The Respondent stated during her interview that she did not believe she needed a medical director present when performing procedures with an IPL machine.
13. The Respondent stated that the machine at Medi-Spa A is called an Isolaz which has settings for both laser and IPL. She stated that she and the “nurses” only use the IPL settings when performing hair removal.
14. The Respondent stated she did not have a medical director at Medi-Spa A during the first year the spa was open, and was not performing IPL procedures.

PATIENT SPECIFIC FINDINGS

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

PATIENT A

15. In June 2012, Patient A was a female in her 20’s when she presented to Medi-Spa A for laser hair removal. She received four laser hair treatments to her facial area from individuals other than the Respondent.
16. On August 29, 2012, Patient A signed an informed consent form for “ultrasonic cavitation” which involved the use of ultrasonic waves to remove unwanted deposits of fat from specific areas of her body.
17. Patient A received four ultrasonic cavitation procedures by practitioners other than the Respondent. On October 3, 2012, the Respondent documented that she performed the fifth ultrasonic cavitation procedure.

PATIENT B

18. In February 2013, Patient B was a female in her thirties when she presented to Medi-Spa A for laser hair removal to her bikini area. She used a "Groupon" for six laser hair-removal treatments on one medium area.
19. On February 8, 2013 and March 8, 2013, the Respondent performed laser and/or IPL hair removal treatments on Patient B's bikini area.
20. There was no medical director or physician employed at Medi-Spa A during this time.

PATIENT C

21. In December 2012, Patient C was a female in her twenties when she presented to Medi-Spa A for laser hair removal of her nipple area.
22. On December 13, 2012, Patient C signed a Laser Consent Form for "Laser Hair Removal."
23. On March 22, 2013, the Respondent performed Patient C's third hair removal treatment for her nipple area and her first hair removal treatment for her chest area.
24. There was no medical director or physician employed at Medi-Spa A during this time.

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, and the Board's regulations under Code Md. Regs. 10.32.09.04A.

III. **ORDER**

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

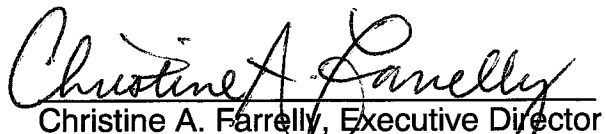
ORDERED that the Respondent shall pay a monetary fine in the total amount of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)** within **TWENTY-FIVE (25) MONTHS** of this Consent Order. The payments may be made by personal check and shall be made payable to the Maryland State Board of Physicians in minimum installments of \$ 300.00 monthly to be paid on or before the 5th day of every month, beginning in the month following the execution of this Consent Order, and to be paid in full no later than **TWENTY-FIVE (25) MONTHS** from the date this Consent Order is executed. 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's failure to pay the \$7,500.00 in full on or within **TWENTY-FIVE MONTHS** of the date of this Consent Order shall be considered a violation of this Consent Order; 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. Code Ann., State Gov't § 10-611 et seq. (2009 Repl. vol. & 2013 Supp.).

2/28/2014
Date


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

CONSENT ORDER

I, Hulya Daniel, 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 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 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.

02-24-14
Date


Hulya Daniel

Reviewed and Approved by:


Daniel H. Scherr, Esquire

STATE OF : Maryland

CITY/COUNTY OF Carroll

I HEREBY CERTIFY that on this 24th day of February, 2014,
before me, a Notary Public of the foregoing State and City/County personally appeared
Hulya Daniel, 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.

Commission expires:

AMY L. PREIS, Notary Public
Carroll County, Maryland
My Commission Expires 12-03-14

Amy L. Preis
Notary Public