

IN THE MATTER OF * BEFORE THE MARYLAND
BRADLY LOWMAN * STATE BOARD
RESPONDENT * OF PHYSICIANS
UNLICENSED * CASE NO.: 2013-0578

* * * * *

PRE-CHARGE CONSENT ORDER

On May 22, 2013, the Maryland Board of Physicians voted to charge Bradly Lowman, an unlicensed individual, with practicing medicine without a license in the State of Maryland. The Board takes such action pursuant to its authority under Md. Health Occupations Code Ann. (Health Occ.) §§14-206(e), 14-601, and 14-606 authorizing the Board to issue a public cease and desist order in addition to a penalty for practicing medicine without a license, as follows:

Health Occ. § 14-206(e)

The Board may issue a cease and desist order or obtain injunctive relief for practicing medicine without a license.

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.

The practice of medicine is defined in pertinent part in **Health Occ. § 14-101(n)** as follows:

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

- (i) Diagnosis;
- (ii) Healing;
- (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:

2. By appliance, test, drug, operation, or treatment.

Health Occ. § 14-606(a)(4) Penalties.

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

In addition, the following regulatory provisions pertain to these charges:

Code Md. Regs. tit. 10, §32.09.02 (2010) Definitions.

B. Terms Defined.

(4)(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;

....

(5)(b) "Cosmetic medical procedure" includes the following:

- (i) Skin treatments including lasers;
- (ii) Skin treatments using intense pulsed light;

....

(viii) Treatments intended to remove or cause the destruction of fat; and

(ix) Any treatment using a cosmetic medical device for the purpose of improving an individual's appearance.

Code Md. Regs. tit. 10, §32.09.03 (2010) Physician Qualifications.

A. License. A physician shall obtain a license to practice medicine in Maryland before the physician may perform, delegate, assign, or supervise cosmetic medical procedures or the use of cosmetic medical devices.

Code Md. Regs. tit. 10, §32.09.04 (2010) Qualifications of an 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.

Maryland Board of Physicians Declaratory Ruling 00-1 (2002)

The use of laser 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.

Prior to the Board's issuance of formal charges, the Respondent agreed to enter into the following Consent Order, consisting Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

I. Background

1. The Respondent is not licensed to practice medicine in Maryland or any other state.

2. The Respondent is not licensed as a certified nurse practitioner, registered nurse, or physician assistant.

3. The Respondent was initially licensed to practice Cosmetology in Maryland in or around 2001. The Respondent's Cosmetology license is current through June 2, 2014.

II. Complaint

4. On February 15, 2013, the Board received a complaint from a physician alleging that unlicensed persons were providing laser hair removal services at the Respondent's business. The physician filed the complaint after seeing an advertisement for "laser hair removal treatments" available for purchase on the "Groupon" site and noting that no physician or medical director was listed on the website for the Respondent's business.

5. Thereafter, the Board opened the case for investigation.

III. Investigation

6. In or around February 2012, the Respondent started a business known as "Medi Spa Pros" located in Baltimore, Maryland.

7. The Respondent employed one registered esthetician and one other individual.

8. On March 27, 2013, Board staff conducted an unannounced site visit to Medi Spa Pros in order to photograph the office and serve subpoenas for business records.

9. The Respondent was not on the premises. Board staff learned from the Respondent's landlord that in or around February 2013, the Respondent removed all equipment, after hours, without informing the landlord.

10. During the site visit, Board staff interviewed five clients of the Respondent who arrived at the office for previously scheduled appointments. They confirmed receiving laser hair removal treatments at Medi Spa Pros as follows:

- a. A client stated she was scheduled her fifth laser hair removal treatment;
- b. A client stated she was scheduled to receive first time laser hair removal treatment;
- c. A client stated she was scheduled to receive her twelfth laser hair removal treatment;
- d. A client stated that she was scheduled to receive her second laser hair removal treatment; and
- e. A client stated that she was scheduled to receive her third laser hair removal treatment.

11. During the site visit, Board staff found several mailings addressed to the Respondent from the Better Business Bureau (“BBB”). After contacting the BBB, Board staff learned that eleven complaints had been filed against Medi Spa Pros. All complaints were related to the fact that the business had been closed “overnight” and without notice to clients who were still waiting to redeem laser hair removal sessions that were pre-purchased through the “Groupon” website.

12. On March 27, 2012, the Board issued a subpoena to the Respondent for a list of the Respondent’s clients receiving laser hair removal services including the names and past and future appointments for those clients from June 1, 2012 through March 27, 2013.

13. On March 27, 2012, the Board issued a second subpoena to the Respondent for all appointment logs from June 1, 2012 through March 27, 2013.

14. On April 2, 2013, Respondent informed Board staff that he was unable to comply with the subpoenas served by the Board because he had destroyed all business records relating to Medi Spa Pros after discontinuing the business in or around February 2013.

15. On April 2, 2013, Board staff interviewed the Respondent under oath at the Board’s offices. The Respondent stated the following information:

- a. Prior to the start of business in or around February 2012, Respondent purchased two intense pulsed light (IPL) lasers on eBay;
- b. The Respondent employed two individuals whom he was aware were not licensed as physicians, nurse practitioners, registered nurses, or physician assistants;

- c. On January 17, 2013 and February 11, 2013, the Respondent advertised and made available for purchase laser hair removal treatments on the "Groupon" website;
- d. The Respondent affirmed that he had not complied with the Board's subpoena requests;
- e. The Respondent admitted that he performed laser hair removal; and
- f. The Respondent admitted to using a laser for a fat cell freezing technique referred to as a "Chitolite system."

V. Summary of Findings

16. Using a laser, including an intense pulsed light (IPL), for hair removal and for fat cell destruction on individuals constitutes performing cosmetic medical procedures with a cosmetic medical device.

17. The Respondent, by performing these cosmetic medical procedures without being a licensed physician, nurse practitioner, or registered nurse is evidence that the Respondent engaged in the practice of medicine without a license, in violation of Health Occ. §14-601.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes as a matter of law, that the Respondent practiced medicine without a license in violation of Health Occ. §14-601.

ORDER

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

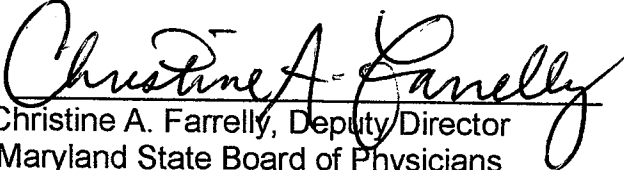
ORDERED that within ONE (1) YEAR from the date the Board executes this Consent Order, the Respondent shall pay a civil fine in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), by certified check or money order, payable to "The Maryland Board of Physicians," and should be sent to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that the Respondent shall CEASE AND DESIST from using a laser or any other cosmetic medical device, engaging in any cosmetic medical procedure, or any other activities which constitute the practice of medicine; and it is further

ORDERED that the Respondent shall not engage in any business arrangement involving the practice of medicine; and it is further

ORDERED that this Consent Order is a PUBLIC DOCUMENT pursuant to Md. State Gov't. Code Ann. § 10-61 et seq. (2009 Repl. Vol. and 2012 Supp.)

7/9/13
Date


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

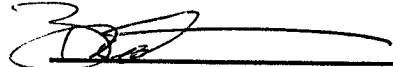
CONSENT

I, Bradly Lowman, after having been fully advised of my right to counsel, voluntarily waive my right to counsel. By this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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 as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

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

July 2, 2013
Date



Bradly Lowman

NOTARY

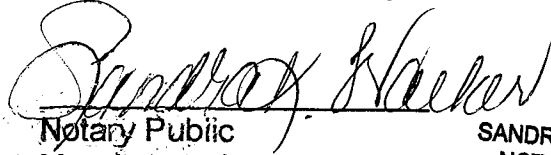
STATE OF Delaware

CITY/COUNTY OF: Sussex

I HEREBY CERTIFY that on this 2nd day of July, 2013, before me, a Notary Public of the State and County aforesaid, personally

appeared Bradly Lowman and gave oath in due form of law that the foregoing
Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Notary Public

My commission expires: _____

SANDRA H. WALKER
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires February 16, 2016