

IN THE MATTER OF * BEFORE THE MARYLAND
DEBORAH MURRAY * STATE BOARD OF
Respondent * PHYSICIANS
Unlicensed * Case Number: 2014-0777

CONSENT ORDER

On or about January 23, 2014, the Maryland State Board of Physicians (the “Board”) opened an investigation of **Deborah Murray** (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 by Dr. K at Facility A from approximately May 2005 through the present as an esthetician.
6. On or about January 23, 2014, the Board received a complaint from a patient (“Patient A”) who had been treated by another esthetician (“Ms. B”) at Facility A employed by Dr. K. Patient A alleged that on September 24, 2012, at Facility A, Ms. B performed an Intense Pulsed Light (“IPL”)⁴ procedure on her chest, which resulted in scarring.
7. 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 and Ms. B had performed cosmetic medical procedures at Facility A including laser hair removal, IPL and fractional pixel therapy (“pixel”).⁵
8. By letter dated April 21, 2014, the Board notified the Respondent it had opened an investigation into the allegations that she had performed cosmetic medical procedures without a license, and requested a written response.
9. By letter dated April 29, 2014, the Respondent submitted a written response to the Board stating that as of early April, after meeting with Dr. K, she was no

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.

longer performing cosmetic medical procedures or utilizing cosmetic medical devices.

10. 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.
11. 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 performed IPL and laser hair removal procedures.

PATIENT-SPECIFIC FINDINGS

12. 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

13. Patient A was a female in her fifties when she presented to Dr. K's practice in 2007 for cosmetic care. She received various cosmetic procedures including a

blepharoplasty (in 2008),⁶ laser, pixel treatments, Botox, dermal facial fillers, and IPL through March 2014.

14. In 2007 the Respondent conducted the following cosmetic medical procedures on Patient A: June 17 (IPL and fraxel⁷ to the face).
15. In 2009 the Respondent conducted the following cosmetic medical procedures on Patient A: May 29 (IPL and fraxel to the face); July 15 (IPL and fraxel to the face) and August 12 (IPL and fraxel to the face).
16. In 2010 the Respondent conducted the following cosmetic medical procedures on Patient A: March 19 (pixel treatment to face); May 26 (pixel treatment to face), June 3 (IPL and pixel treatment to face); July 23 (IPL to arms, legs, back and chest); August 12 (IPL and pixel to face, neck and eyes) and October 21 (IPL to chest and legs).
17. In 2011 the Respondent conducted the following cosmetic medical procedures on Patient A: January 21 (pixel to the face and eyes); February 18 (IPL to the legs and arms); March 23 (IPL to the face, neck and arms and pixel to the legs, arms and chest) and July 7 (pixel to the face and chin).
18. In 2012 the Respondent conducted the following cosmetic medical procedures on Patient A: February 23 (IPL and pixel to the eye area); June 29 (IPL and pixel to the face and eyes) and September 14 (IPL and pixel to the legs).

⁶ Eyelid surgery.

⁷ Fraxel is a type of laser used in the treatment of wrinkled or sun-damaged skin.

19. In 2013 the Respondent conducted the following cosmetic medical procedures on Patient A: January 8 (IPL and pixel to the face and eyes) and October 1 (pixel of the face, neck and eyes).
20. In 2014 the Respondent conducted the following cosmetic medical procedures on Patient A: March 25 (IPL to the chest and sides of face).

PATIENT B

21. Patient B was a female in her twenties when she presented to Dr. K's office in February 2013 for laser treatments of her chin and neck area due to ingrown hairs and hyperpigmentation.
22. The Respondent performed laser treatments of Patient B's chin and neck on the following dates in 2013: February 28; May 7; July 9; September 3 and November 22.

PATIENT C

23. Patient C was a female in her fifties when she presented to Dr. K's office in 2011 for skin care.
24. Patient C received cosmetic procedures through February 2014 including IPL and pixel treatments, microdermabrasion, facial dermal filler and Botox,
25. In 2012 the Respondent performed the following cosmetic medical procedures for Patient C: August 4 (IPL of the face and chest); November 17 (IPL of face) and December 27 (pixel of face, neck and eyes).

26. In 2013 the Respondent performed the following cosmetic medical procedures for Patient C: March 21 (pixel treatments of the face and eyes) and July 20 (laser hair removal).
27. In 2014 the Respondent performed the following cosmetic medical procedure for Patient C: February 12 (pixel treatment of face) and February 20 (pixel treatment of face).

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 **ONE THOUSAND DOLLARS (\$1,000.00)**. 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.).

10/10/14
Date


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

CONSENT

I, Deborah Murray, 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.

9-26-14
Date

Deborah K. Murray
Deborah Murray

Reviewed and Approved by:

Neal M. Brown
Neal M. Brown, Esquire

STATE OF MARYLAND

CITY/COUNTY OF:

I HEREBY CERTIFY that on this 26 day of September, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared Deborah Murray 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 Boelcher
Notary Public

My commission expires:

11/18/17

