

IN THE MATTER OF * BEFORE THE MARYLAND
ELIZABETH ROSATI * STATE BOARD OF
Respondent * PHYSICIANS
Unlicensed * Case Number: 2015-0463

* * * * *

CONSENT ORDER

On July 28, 2015, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board"), charged **ELIZABETH ROSATI** (the "Respondent"), under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 14-101 *et seq.* The pertinent provisions of the Act provide the following:

H.O. § 14-601. Practicing without license.

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.

H.O. § 14-606. Penalties.

(a) *Imposition of penalties.* --

...

(4) Except as provided in paragraph (5) of this subsection,¹ a person who violates § 14-601 or § 14-602 of this subtitle is:

...

(ii) Subject to a civil fine of not more than \$50,000 to be levied by the Board.

Section 14-101 of the Health Occupations Article defines the practice of medicine, in pertinent part, as follows:

(o) *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. ("COMAR") 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[;]

(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;

...

(v) Skin treatments with phototherapy;

(vi) Microdermabrasion;

...

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

(ix) Any treatment using a cosmetic medical device for the purpose of improving an 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, 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.

² Light Amplification by Stimulated Emission of Radiation.

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 November 4, 2015, a conference with regard to this matter was held before Panel A of the Board's Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

I. BACKGROUND

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.

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

2. At all times relevant, the Respondent was employed at Practice A, a private dermatology practice in Pikesville, Maryland as a medical assistant.⁴ At all times relevant, her title was Cosmetic Coordinator.⁵ The Respondent began her employment with Practice A in 2009.

3. At all times relevant, Dr. E was the owner of Practice A.⁶

4. On or about November 5, 2014, the Board received a complaint from a former patient ("Patient A") of Practice A alleging that Dr. E did not provide an initial consultation prior to Patient A's CoolSculpting procedures and that a technician named "Liz" performed the procedure.⁷

5. Thereafter, the Board initiated an investigation.

6. On or about December 15, 2014, a member of the Board's staff interviewed Patient A, who stated that she paid \$2,000 for CoolSculpting procedures, which were all performed by the Respondent.

7. Patient A further stated that she did not have a consultation with Dr. E prior to the procedures.

8. The Respondent performed three CoolSculpting procedures for Patient A.

9. Patient A stated that on or about June 11, 2014, she informed the Respondent that she was not satisfied with the results. Patient A stated that she "had ten pounds of fat hanging from my stomach, resting on my side." According to Patient A, the Respondent told her that the only way to remove the overhang is to have a tummy tuck.

⁴ In order to maintain confidentiality, names will not be used in these Charges. The Respondent may obtain a list of the names referenced in the Charges by contacting the Administrative Prosecutor.

⁵ After the Board initiated its investigation, the Respondent's duties changed to include only office management responsibilities. The Respondent no longer serves as Cosmetic Coordinator.

⁶ The Board opened an investigation involving Dr. E under Case #2015-0332A.

⁷ CoolSculpting is a cosmetic medical procedure that involves the cooling of adipose tissue to induce the breakdown of fat cells.

10. Ultimately, Patient A did undergo abdominoplasty⁸ which was performed by another physician.

11. Patient A wrote a letter to Dr. E expressing her dissatisfaction. Dr. E gave her a refund of \$600.

12. On or about January 7, 2015, the Board's staff made an unannounced site visit to Practice A. Dr. E and the Respondent were present during the site visit.

13. During the site visit, the Board's staff conducted an interview of the Respondent, who stated that her duties consisted of assisting Dr. E with procedures, performing CoolSculpting procedures, providing chemical peels, light microdermabrasion and radio frequency. The Respondent also discussed various cosmetic options with patients.

14. The Board's staff also conducted an interview of the Respondent on February 26, 2015. During that interview, the Respondent stated that she provided chemical peels such as Perfect 10 Peel, Topix and SkinMedica from January 2014 until January 2015.

15. The Respondent stated that she received training from representatives of the companies that sell chemical peels and attended several dermatology meetings and training seminars. The Respondent further stated that she went to San Francisco for three or four days to learn how to perform the CoolSculpting procedure.

16. The Respondent stated that she performed CoolSculpting for approximately one year. The Respondent further estimated that she had performed approximately 300 CoolSculpting procedures, 500 microdermabrasion procedures and two laser hair removal procedures over the previous three years.

⁸ A surgical procedure, also known as a tummy tuck, which involves the removal of excess flesh from the abdomen.

17. On March 19, 2015, the Board's staff conducted an interview with Dr. E, who stated that prior to the Board's investigation, the Respondent performed CoolSculpting, microdermabrasion, chemical peels, VelaShape⁹, Ultherapy¹⁰; Sublative/Sublime¹¹.

18. Dr. E also stated that the Respondent performed laser hair removal twice but "was never delegated to perform laser hair removal . . . and [the Respondent] was instructed that she cannot perform laser hair removal."

19. Dr. E further stated she was always present, but not necessarily in the treatment area, when the Respondent was performing the various treatments.

II. PATIENT-SPECIFIC ALLEGATIONS

The following patients represent a small sampling of women who received cosmetic medical treatments conducted by the Respondent:

PATIENT A

20. Patient A, a female in her 70s, consulted with the Respondent in December 2013 regarding the Coolsculpting procedure.

21. According to the handwritten Cosmetic Flow Sheet in Patient A's medical record, the Respondent performed the CoolSculpting¹² procedure on Patient A's periumbilical skin on December 18, 2013, January 7, 2014 and February 4, 2014.

22. Patient A's medical record also contains electronic medical records ("EMR") for a visit on December 23, 2013, which documents a CoolSculpting procedure. The Cosmetic Flow Sheet does not reflect a CoolSculpting procedure on December 23, 2013. In addition, Patient A's medical record lacks a EMR visit note for January 7, 2014.

⁹ VelaShape uses noninvasive light and radio-frequency waves.

¹⁰ Ultherapy uses ultrasound to tighten sagging skin.

¹¹ Sublative/Sublime uses radiofrequency to improve the appearance of skin.

¹² The Respondent documented "CoolMax" which represents the use of a larger applicator for the procedures on December 18, 2013 and January 7, 2014.

PATIENT B

23. Patient B, a female in her 40s, presented to Practice A for a CoolSculpting procedure consultation in July 2014. The Respondent evaluated Patient B and recommended six CoolSculpting treatments total for her abdomen and flank.

24. According to the Cosmetic Flow Sheet, the Respondent performed the CoolSculpting procedure on Patient B on July 9, 2014 (lower abdomen) and August 13, 2014 (lower abdomen).

25. Patient B's medical record contains an EMR for a visit on July 17, 2014, which documents a CoolSculpting procedure (left and right flank) on that date. The Cosmetic Flow Sheet does not reflect a CoolSculpting procedure on July 17, 2014.

PATIENT C

26. Patient C, a female in her 70s, was a patient of Practice A since at least August 2009.

27. According to the Cosmetic Flow Sheet, the Respondent performed the CoolSculpting procedure on Patient C on January 2, 2014 (lateral mid-back) and April 29, 2014.

28. Patient C's medical record contains a EMR visit note for April 29, 2014; however, it does not include documentation of a CoolSculpting procedure.

PATIENT D

29. Patient D, a female in her 40s, presented to Practice A in December 2013 for a cosmetic consultation.

30. On January 15, 2015 and January 22, 2015, the Respondent performed VelaShape procedure on Patient D's abdomen.¹³

PATIENT E

31. Patient E, a female in her 20s, presented to Practice A on January 31, 2014 for a CoolSculpting consultation. The Respondent recommended two or three CoolSculpting treatments.

32. The Respondent performed the CoolSculpting procedure on Patient E's upper abdomen on February 28, 2014.

PATIENT F

33. Patient F, a female in her 70s, presented to Practice A on May 21, 2014 for a CoolSculpting consultation. The Respondent recommended five CoolSculpting treatments.

34. The Respondent performed CoolSculpting on Patient F on June 2, 2014 (upper and lower abdomen) and June 3, 2014 (right and left knees).

PATIENT G

35. Patient G, a female in her 70s, presented to Practice A on January 21, 2014 for a CoolSculpting consultation. The Respondent recommended six CoolSculpting treatments.

36. According to the Cosmetic Flow Sheet, the Respondent performed CoolSculpting on Patient G on March 7, 2014 (upper and lower abdomen) and June 13, 2014 (upper abdomen).

¹³ Portions of Patient D's medical record indicate that she received Zerona laser treatments. The Respondent clarified that Patient D actually received VelaShape treatments, but it was documented as Zerona because Practice A's electronic medical record system did not have VelaShape as an option.

37. Patient G's EMR also reflects that the Respondent performed the CoolSculpting procedure on Patient G on April 11, 2014 (lower abdomen). This treatment is not documented on the Cosmetic Flow Sheet.

PATIENT H

38. Patient H, a female in her 60s, presented to Practice A on February 19, 2014 for a CoolSculpting consultation. The Respondent recommended six CoolSculpting treatments. Patient H also consulted with the Respondent regarding Sublative and Ultherapy.

39. On February 28, 2014, the Respondent performed Sublative on Patient H's face.

40. On March 4, 2014 (thighs), March 6, 2014 (abdomen), May 22, 2014 (knees), and May 27, 2014 (upper abdomen), the Respondent performed the CoolSculpting procedure on the Patient H.

41. On March 11, 2014 (mid-lower face) and May 27, 2014 (eyelid and face), the Respondent performed Ultherapy on Patient H.

PATIENT I

42. Patient I, a teenage female, presented to Practice A in 2013 for treatment of various skin rashes.

43. The Respondent performed Sublative on Patient I on February 24, 2014 (arm, trunk and leg), April 1, 2014 (trunk and arm), May 27, 2014 (trunk) and June 24, 2014 (trunk and leg).

PATIENT J

44. Patient J, a male in his 40s, presented to Practice A in October 2014 for laser hair removal.

45. The Respondent performed laser hair removal for Patient J on October 14, 2014.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated. H.O. §14-601.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the Board hereby:

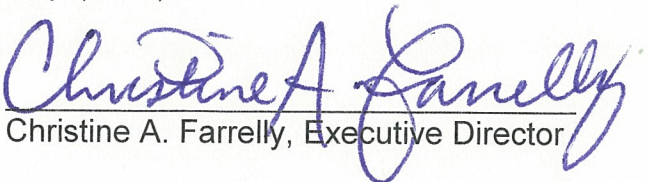
ORDERED that the Respondent shall immediately **CEASE AND DESIST** from the unlicensed practice of medicine, including the performance of cosmetic medical procedures as defined in COMAR 10.32.09.02B(5); and it is further

ORDERED that no later than **THIRTY (30) DAYS** from the date of this Consent Order, the Respondent shall pay a monetary fine in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**. This payment shall be made by certified or bank guaranteed check(s) made payable to the Maryland 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. Code Ann. General Provisions §§ 4-101 *et seq.* (2014).

12/14/2015
Date


Christine A. Farrelly, Executive Director

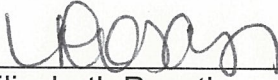
CONSENT

I, Elizabeth Rosati, 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.

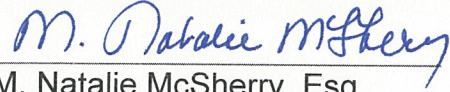
I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of a disciplinary panel 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 a disciplinary panel 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.

12/4/2015
Date


Elizabeth Rosati

Read and approved by:


M. Natalie McSherry, Esq.
Attorney for Ms. Rosati

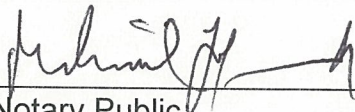
NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Frederick:

I HEREBY CERTIFY that on this 4th day of December, 2015 before me, a Notary Public of the foregoing State personally appeared Elizabeth Rosati, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.


Notary Public

My Commission Expires: 12/15/18

