

IN THE MATTER OF	*	BEFORE THE
MELANIE SIMMONS	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
Unlicensed	*	Case Number: 2015-0745A
* * * * *	*	* * * * *

**CONSENT ORDER**

**PROCEDURAL BACKGROUND**

On January 4, 2016, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **MELANIE SIMMONS** (Unlicensed) (the "Respondent"), with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-101 *et seq.* (2014 Repl. Vol.) and Md. Code Regs. ("COMAR") 10.32.09.01 *et seq.*

Specifically, Panel A charged the Respondent with violating the following provisions of the Act:

**Health Occ. II § 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.

**Health Occ. II § 14-606. Penalties.**

(a) *Imposition of penalties.* --  
 ...

(4) Except as provided in paragraph (5) of this subsection,<sup>1</sup> 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.

---

<sup>1</sup> Paragraph (5) does not apply to the Respondent.

**Health Occ. II § 14-101. Definitions.**

Health Occ. II § 14-101 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:

...

(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[.]

The pertinent provisions of the Board's regulations under COMAR 10.32.09 provide:

**01. Scope.**

A. This chapter governs the performance, delegation, assignment, and supervision of cosmetic medical procedures, and the use of cosmetic medical devices by a physician or under a physician's direction.

...

D. This chapter does not authorize the delegation of any duties to any person who is not licensed under Health Occupations Article, Annotated Code of Maryland.

**.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 pulse light;

(iii) Device emitting radio frequency, electric pulses, or sound waves;

(iv) Microdermabrasion device; and

(v) Devices used for the injection or insertion of foreign or natural substances into the skin, fat, facial tissue, muscle, or bone.

(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 treatment using lasers;

(ii) Skin treatment using intense pulsed light;

(iii) Skin treatment using radio frequencies, microwave, or electric pulses;

...

- (vi) Microdermabrasion;
- (vii) Subcutaneous, intradermal, or intramuscular injections of medical products;
- (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.

**.09 Grounds for Discipline.**

- C. Other Individual. An individual using a cosmetic medical device or performing a cosmetic medical procedure who is not a licensed physician and is not authorized to perform the cosmetic medical procedure under this chapter, or under regulations promulgated by another licensing board established by Health Occupations Article, Annotated Code of Maryland, is guilty of the practice of medicine without a license and may be subject to a fine of not more than \$50,000 under Health Occupations Article, §14-606, Annotated Code of Maryland.

On February 10, 2016, the Respondent appeared before Panel A. As a result of negotiations occurring before Panel A, the Respondent agreed to enter into the following Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

## FINDINGS OF FACT

Panel A makes the following Findings of Fact:

### **BACKGROUND**

1. At all times relevant hereto, the Respondent was not and is not licensed or certified by the Board or the Maryland Board of Nursing in any capacity. The Respondent has never been licensed under the Health Occupations, Article, Annotated Code of Maryland.

2. At all times relevant hereto, the Respondent was licensed as an aesthetician by the Maryland Board of Cosmetology. The Respondent's license is active and current through December 2016.

3. At all times relevant hereto, the Respondent was employed as an aesthetician at a medical practice (the "Practice"), located in Annapolis, Maryland. The Respondent was supervised by a physician ("Physician A") who was a partner at the Practice, and who was licensed to practice medicine in the State of Maryland. The Respondent began working at the Practice on or about February 1, 2015.

### **THE COMPLAINT**

4. Panel A initiated an investigation of the Practice in 2015 after reviewing a an advertisement that promoted various offers and services there, including a "botox event" and laser skin treatments. The advertisement stated that "all skin care procedures" were performed by a "medical aesthetician."

## BOARD INVESTIGATION

5. By letter dated July 17, 2015, the Board requested that the Respondent and Physician A provide written explanations with regard to the various procedures they performed at the Practice.

6. By letter dated July 23, 2015, Physician A submitted a written response to the Board. Physician A stated that the Practice was a "subspecialty ophthalmology practice that provided services pertaining to the eyes and structures around the eyes," and that it also offered "cosmetic skin care and microdermabrasion treatments" to patients as a complement to the plastic surgery, lasik and vision improvements performed in the office. Physician A stated that the Respondent is an employee of the Practice and among other services, performs "light chemical peels, microdermabrasion treatments and Dermafrac™ treatments for patients under physician supervision." Physician A stated that as a result of the Board inquiry, the Practice "ceased the use of microderm and Dermafrac™ in our practice, now that these potential violations have been brought to our attention."

7. By letter dated July 23, 2015, the Respondent submitted a written response to the Board. The Respondent stated that she was an employee of the Practice and admitted performing "microdermabrasion and Dermafrac™" services to patients while working there. The Respondent stated that as a result of the Board's inquiry, she would "no longer perform cosmetic medical procedures or utilize cosmetic medical devices" and "apologize[d] to the Board for any misunderstanding on . . . [her] . . . part and any inconvenience this has caused."

8. In the course of its investigation, Board staff interviewed Physician A on August 23, 2015, at the Board's offices. During the interview, Physician A acknowledged that the Practice hired the Respondent to perform superficial chemical peels, microdermabrasion and Dermafrac™, which Physician A described as a medical device that uses "micro needles" to infuse various products into the epidermis for purposes of hydration and pigmentary tone.

9. On or about August 24, 2015, Board staff interviewed the Respondent at the Board's offices. The Respondent stated that she was hired at the Practice to work as an aesthetician and began working there on or about February 1, 2015. The Respondent stated that from on or about February 1, 2015, until on or about July 15, 2015, she estimated that she performed about 25 microdermabrasion treatments on patients at the Practice. She also stated that she performed Dermafrac™ treatments, which involved using "micro needles" that "create tiny punctures in the skin" for the infusion of a serum.

10. In the course of its investigation, the Board obtained ten (10) patient records from the Practice that involved the Respondent's performance of cosmetic medical procedures on patients. During the Respondent's interview, Board staff showed her two of these patient records involving patients for which she provided cosmetic medical procedures. The Respondent confirmed that with respect to these patients, she performed cosmetic medical procedures including microdermabrasion and Dermafrac™ treatments.

11. The Board also obtained appointment logs and examined patient records for patients whom the Respondent treated at the Practice A from on or about February

1, 2015, until on or about July 15, 2015. These records confirmed that the Respondent provided cosmetic medical procedures including microdermabrasion and Dermafrac™ treatments to patients at the Practice.

**CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent practiced medicine without a license when performing microdermabrasion and Dermafrac™ treatments, in violation of Health Occ. II 14-601; and COMAR 10.32.09.09C.

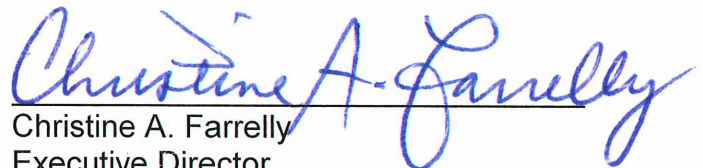
**ORDER**

It is, on the affirmative vote of a majority of the quorum of Panel A, hereby:

**ORDERED** that within **SIXTY (60) DAYS** of the date Panel A executes this Consent Order, the Respondent shall pay a monetary fine in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** by bank certified check or money order, made payable to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

**ORDERED** that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

03/01/2016  
Date

  
Christine A. Farrelly  
Executive Director  
Maryland State Board of Physicians

**CONSENT**

I, Melanie Simmons, acknowledge that I have had the opportunity to consult with counsel before signing this document. 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, Conclusions of Law and Order.

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 Panel A 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 Disciplinary Panel B that might have followed any such hearing.

I sign this Consent Order after 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.

2/24/14  
Date

Melanie Simmons  
Melanie Simmons  
Respondent

Read and approved:

Anthony J. Breschi  
Anthony J. Breschi, Esquire  
Counsel for Ms. Simmons

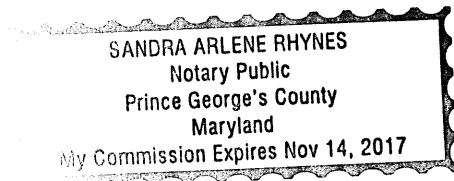
**NOTARY**

**STATE OF MARYLAND**

**CITY/COUNTY OF** Prince George's

**I HEREBY CERTIFY** that on this 24<sup>th</sup> day of February,  
2016, before me, a Notary Public of the foregoing State and City/County personally  
appear Melanie Simmons 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 notary seal.



Sandra Rhynes  
Notary Public

My commission expires: 11-14-17