

IN THE MATTER OF	*	BEFORE THE MARYLAND
RENEE TUCKER	*	STATE BOARD OF
Respondent	*	PHYSICIANS
Unlicensed	*	Case Number: 2013-0673

CONSENT ORDER

On October 10, 2013, the Maryland State Board of Physicians (the "Board"), charged Renee Tucker (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:

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

...

(iii) Treatment; or

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

- (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. 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 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.

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:

² Light Amplification by Stimulated Emission of Radiation.

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

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 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 was employed at Facility A in Chevy Chase, Maryland as an esthetician. At all times relevant, the Respondent was not licensed as an esthetician in Maryland.⁴
3. At all times relevant, Dr. W was the medical director of Facility A.⁵ The Respondent began her employment with Dr. W sometime in 2007.
4. On or about March 21, 2013, the Board opened an investigation of the Respondent based on information obtained from Facility A’s website. The website stated that the Respondent provided several cosmetic procedures at Facility A including “Gentle Waves

⁴ The Respondent’s actions exceed the scope of practice of an esthetician in Maryland.

⁵ The Board opened an investigation involving Dr. W under Case #2013-0672.

LED,”⁶ Intense Pulsed Light (“IPL”), microdermabrasion, photodynamic therapy, “Refirme,”⁷ “Velashape,”⁸ and laser hair removal.

5. On or about May 21, 2013, the Board’s staff made an unannounced site visit to Facility A. The Respondent was not present at Facility A during the site visit.
6. On May 21, 2013, Dr. W was present at Facility A, and the Board’s staff conducted an interview. Dr. W acknowledged that the Respondent had performed procedures including laser hair removal, IPL and “Clear and Brilliant” laser therapy.⁹
7. On or about June 6, 2013, the Respondent submitted a written response (through her attorney) to the pending allegations. The written response indicated that the Respondent was remorseful and had been unaware of the change in the Maryland regulations regarding treatments provided at Facility A.
8. On June 13, 2013, the Board’s staff interviewed the Respondent regarding the allegations that she had engaged in the unauthorized practice of medicine by performing cosmetic procedures as outlined in § 4. She acknowledged that she had performed procedures at Facility A including IPL, “Clear and Brilliant,” laser hair removal and VelaShape,¹⁰
8. The esthetician charge sheet used by the Respondent at Facility A included the following cosmetic procedures: multiple facial procedures using an LED, ReFirme procedures using an “elight,”¹¹ IPL therapies and laser hair removal.

⁶ LED stands for Light Emitting Diode and is a semiconductor light source.

⁷ Laser treatment to stimulate collagen production, mostly used in the head and neck areas.

⁸ Vela Shape is a body contouring procedure combining bi-polar radiofrequency energy and infrared light energy, coupled with vacuum suction and mechanical massage.

⁹ Clear and Brilliant is a fractional laser used in the treatment of aging skin.

¹⁰ In the transcript of the Respondent’s interview, the procedure was misspelled as “Bella Shape.”

¹¹ A cosmetic skin tightening procedure using a type of laser.

PATIENT-SPECIFIC FINDINGS

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

PATIENT A

9. Patient A, a female in her 30's, became a patient of Facility A in November 2012.
10. On May 20, 2013, the Respondent performed IPL on Patient A for "skin rejuvenation."

PATIENT B

11. On April 9, 2013, Patient B, a male in his 20's presented to Facility A for laser hair removal.
12. On April 9, 2013, the Respondent performed laser hair removal on Patient B's front neck area.

PATIENT C

13. Patient C was a female in her 30's when she received various cosmetic treatments by the Respondent.
14. On March 6, 2012 and October 1, 2012, the Respondent witnessed Patient C's signature on a consent form for "Gentle Waves" light assisted skin care and treatment. Gentle Waves is a skin rejuvenation treatment using LED light.
15. The Respondent performed LED to Patient C's face on the following dates: November 7, 2011, March 6, 2012 and October 1, 2012.
16. On April 10, 2012, the Respondent witnessed Patient C's signature on a consent form for IPL.
17. The Respondent performed IPL photorejuvenation for Patient C on the following dates: April 5, 2010 to her face and chest; November 7, 2011 to her face; and April 10, 2012 to her face and chest.

18. The Respondent performed IPL to Patient C's face and neck on May 20, 2013.
19. On April 16, 2012, May 2, 2013 and May 20, 2013, the Respondent witnessed Patient C's signature on a consent form for "Clear and Brilliant" laser treatments.
20. The Respondent performed "Clear and Brilliant" laser treatments to Patient C's face and neck area on the following dates: April 6, 2013, April 16, 2013, May 2, 2013 and May 20, 2013.

PATIENT D

21. In April 2013, Patient D, a female in her 60's, presented to Facility A for a variety of cosmetic procedures.
22. On May 21, 2013, the Respondent performed IPL on Patient D's face.

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 **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** within **THIRTY (30) DAYS** of this Consent Order. The payment shall be 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's failure to pay the \$2,500.00 in full on or within 30 days 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. State Gov't Code Ann. § 10-611 et seq. (2009 Repl. vol. & 2012 Supp.).

2/28/2014
Date


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

CONSENT ORDER

I, Renee Tucker, 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.

2-21-14
Date

Renee Tucker
Renee Tucker

Reviewed and Approved by:

S. Krevor-Weisbaum
Sharon Krevor-Weisbaum, Esquire

STATE OF: Virginia

CITY/COUNTY OF Arlington

I HEREBY CERTIFY that on this 21st day of February, 2014, before me, a Notary Public of the foregoing State and City/County personally appeared Renee Tucker, 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.

Ahmad T. Ayub
Notary Public

Commission expires: 1-31-18

AHMAD T. AYUB
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES JAN. 31, 2018
COMMISSION # 7263299