IN THE MATTER OF	*	**BEFORE THE MARYLAND**
DEAN P. KANE, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D26662	*	**Case Numbers: 2014-0602 & 2014-0960A**

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CONSENT ORDER

On or about January 23, 2014, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board"), opened an investigation of Dean P. Kane, M.D. (the "Respondent"), License Number D26662, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 et seq. (2009 Repl. Vol. & 2013 Supp.).

Based on its investigation, the Board has grounds to charge the Respondent under the following provisions of Health Occ. § 14-404(a):

> (3) Is guilty of:
> (ii) Unprofessional conduct in the practice of medicine[;]
> (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine[.]

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;

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

...

(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 lasers[1] 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

[1] Light Amplification by Stimulated Emission of Radiation.

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.

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.

I. FINDINGS OF FACT

Disciplinary Panel A of the Board finds the following:

1. At all times relevant, the Respondent has been licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in 1981, and his license is

[2]Citing I. Dorland, W.A. Newman, Dorland's Illustrated Medical Dictionary, 28th Ed., W. B. Saunders Co., Philadelphia (1994).

presently active through September 2016. The Respondent also holds an active license in Florida.

2. The Respondent, a board-certified plastic surgeon, is the owner/medical director of a cosmetic surgery center/medispa in Baltimore, Maryland (Practice A[3]). The Respondent's wife, unlicensed in any health occupation, is the office administrator of Practice A.

3. The Respondent holds hospital privileges at three Baltimore area hospitals and at an ambulatory surgical center.

4. The Board received two complaints alleging unlicensed individuals were practicing unauthorized cosmetic procedures in Facility A (Case #s 2014-0602 & 2014-0960). The unlicensed individuals are identified for purposes of this document as Ms. B, Ms. M and Ms. W. The findings are set forth below.

2014-0602

5. From approximately September 2002 through the present, the Respondent employed Ms. B[4] as an esthetician at Facility A. At all times relevant, Ms. B was not licensed by the Maryland Board of Physicians or the Maryland Board of Nursing. Ms. B was and is licensed as an esthetician in Maryland.[5]

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[3] In order to maintain confidentiality, facility, patient and employee names will not be used in these charges.

[4] The Board opened an investigation and charged Ms. B with the unauthorized practice of medicine under MBP Case # 2014-0607.

[5] Ms. B's actions outlined in these charges exceed the scope of practice of an esthetician in Maryland.

6. From approximately May 2005 through the present, the Respondent employed Ms. M[6] as an esthetician at Facility A. At all times relevant, Ms. M was not licensed by the Maryland Board of Physicians or the Maryland Board of Nursing. Ms. M was and is licensed as an esthetician in Maryland.[7]

7. On or about January 23, 2014, the Board received a complaint from a patient who had been treated by Ms. B ("Patient A"). Patient A alleged that on September 24, 2012, at Facility A, Ms. B performed an Intense Pulsed Light ("IPL")[8] procedure on her chest, which resulted in scarring. Patient A subsequently underwent several corrective procedures by a provider at another practice to reduce the grid-like pattern on her chest.

8. Patient A further alleged that she had not been informed of the risks of the IPL procedure by the Respondent, Ms. B, or anyone in his practice.

9. On or about April 3, 2014, the Board's staff made an unannounced site visit to Facility A. 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 two estheticians on Facility A's staff, Ms. B and Ms. M, had performed cosmetic medical procedures at Facility A including laser hair removal, IPL and fractional pixel therapy ("pixel").[9]

10. On or about April 16, 2014, the Respondent submitted a written response to the Board addressing Patient A's allegations, as well as the allegations that Ms. B and Ms.

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[6] The Board opened an investigation and charged Ms. M with the unauthorized practice of medicine under MBP Case # 2014-0607.

[7] Ms. M's actions outlined in these charges exceed the scope of practice of an esthetician in Maryland.

[8] IPL uses the emission of broad spectrum light through intense pulses to improve the appearance of skin and for hair removal.

[9] A laser handpiece that provides fractional ablative therapy for skin rejuvenation purposes.

M had engaged in the unauthorized practice of medicine by performing cosmetic medical procedures. The Respondent stated that prior to the Board's subpoenas related to Patient A's complaint, he was not aware that estheticians were not allowed to perform cosmetic medical procedures in Maryland. The Respondent acknowledged that Practice A's estheticians had performed cosmetic medical procedures, but he had subsequently stopped allowing his estheticians to perform cosmetic procedures such as laser and IPL once he learned that estheticians are not authorized to perform such procedures.

11. On May 19, 2014, the Board's staff interviewed Ms. B regarding the allegations that she had engaged in the unauthorized practice of medicine by performing cosmetic medical procedures. Ms. B acknowledged that she had performed cosmetic medical procedures at Facility A including IPL, laser hair removal and pixel treatments. Ms. B further admitted that she performed IPL on Patient A's chest and hands. On May 19, 2014, the Board's staff conducted an interview of Ms. M under oath regarding allegations of her unauthorized practice of medicine under the Respondent's supervision. Ms. M acknowledged that she performed cosmetic procedures including IPL; however, on notification of the Board's investigation, stated that she is no longer conducting any cosmetic medical procedures.

12. On May 19, 2014, the Board's staff conducted an interview of the Respondent under oath regarding allegations of Ms. B's and Ms. M's unauthorized practice of medicine under the Respondent's supervision. The Respondent acknowledged that

prior to the Board's investigation Ms. B and Ms. M had both performed IPL and laser hair removal procedures.

PATIENT-SPECIFIC FINDINGS

13. The Respondent, as owner/medical director of Facility A and supervisor of Ms. B and Ms. M, hired Ms. B and Ms. M to perform the cosmetic medical procedures as outlined in pertinent part below, and was aware that Ms. B and Ms. M performed the cosmetic medical procedures. The following patients represent a small sampling of women who received cosmetic medical treatments conducted by Ms. B and Ms. M:

PATIENT A

14. In November 2008, Patient A was a female in her forties when she initially presented to Facility A for cosmetic skin care. Between November 2008 and September 24, 2012, Patient A received cosmetic procedures including facials, microdermabrasion, pixel treatments (to the back of Patient A's hands), and Botox injections. According to Patient A, Ms. B primarily provided the facials, microdermabrasion and pixel treatments and the Respondent administered the Botox injections.

15. On September 24, 2012, Patient A presented for an appointment for microdermabrasion with Ms. B and signed a Consent form that was entitled, "Superficial Epidermal Exfoliation Therapies."

16. On September 24, 2012, after Ms. B performed the microdermabrasion procedure on Patient A's face, she subsequently performed IPL of Patient A's chest and hands, and a pixel procedure to her face.

17. Patient A did not sign an informed consent form for the IPL or pixel procedures conducted on September 24, 2012.

18. Postoperatively Ms. B provided Patient A with ice to place on her chest area. Patient A recalled that she experienced excruciating pain.

19. On September 25, 2012, Patient A described to Ms. B by telephone that her chest had blistered, and it appeared as if she had "laid on a grill."

20. On October 5, 2012, eleven days after the procedure, Patient A's chest area was scarred with grid-like markings.

21. On October 6, 2012, Patient A made an appointment to see Nurse A at Facility A as the Respondent did not see patients on Saturdays. Nurse A advised Patient A not to have any additional laser treatments to her chest and recommended a lightener exfoliator.

22. On October 12, 2012, Patient A met with the Respondent and the Office Administrator to discuss the recommended follow-up care for her chest area.

23. Patient A sought a second opinion from Physician A and the Respondent agreed to pay for the corrective treatment. To date, Patient A has undergone multiple corrective procedures through Physician A's office and used lightening creams. There has been improvement, however, scarring still remains.

PATIENT B

24. Patient B was a female in her sixties when she presented to the Respondent's practice in November 2012 for cosmetic skin care. She received photofacials, IPL treatments, laser treatments, and Botox injections through January 2013.

25. On January 4, 2013, Ms. B conducted an IPL treatment to Patient B's face for brown pigment issues.

PATIENT C

26. Patient C was a female in her fifties when she presented to the Respondent's practice in 2007 for cosmetic care. She received various cosmetic procedures including a blepharoplasty (in 2008), laser, pixel treatments, Botox, dermal facial fillers, and IPL through March 2014.

27. In 2007, Ms. M conducted the following cosmetic medical procedures on Patient C: June 17 (IPL and fraxel[10] to face).

28. In 2009, Ms. M conducted the following cosmetic medical procedures on Patient C: 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).

29. In 2010, Ms. M conducted the following cosmetic medical procedures on Patient C: 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).

30. In 2011, Ms. M conducted the following cosmetic medical procedures on Patient C: 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).

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

31. In 2012, Ms. M conducted the following cosmetic medical procedures on Patient C: 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).

32. In 2013, Ms. M conducted the following cosmetic medical procedures on Patient C: January 8 (IPL and pixel to the face and eyes) and October 1 (pixel of the face, neck and eyes).

33. In 2014, Ms. M conducted the following cosmetic medical procedures on Patient C: March 25 (IPL to the chest and sides of face).

PATIENT D

34. Patient D was a female in her teens when she presented to the Respondent's practice on January 23, 2013 for laser hair removal of her legs and bikini area.

35. Ms. B performed laser hair removal for Patient D on five occasions in 2013: January 23; March 8; June 19; August 16 and November 26.

PATIENT E

36. Patient E was a female in her thirties when she presented to the Respondent's practice in February 2011 for a liposuction consultation.

37. Patient E received several cosmetic procedures through March 2014 including liposuction, breast augmentation, Botox, facial filler, microdermabrasion and laser hair removal.

38. Ms. B performed laser hair removal of Patient E's underarm area on: September 19 and October 19, 2012; and the following dates in 2013: January 18; March 1; April 15 and July 31.

PATIENT F

39. Patient F was a female in her twenties when she presented to the Respondent's office in February 2013 for laser treatments of her chin and neck area due to ingrown hairs and hyperpigmentation.

40. Ms. M performed laser treatments of Patient F's chin and neck on the following dates in 2013: February 28; May 7; July 9; September 3 and November 22.

PATIENT G

41. Patient G was a female in her fifties when she presented to the Respondent's office in 2011 for skin care.

42. Patient G received cosmetic procedures through February 2014 including IPL and pixel treatments, microdermabrasion, facial dermal filler and Botox.

43. In 2012, Ms. M performed the following cosmetic medical procedures for Patient G: August 4 (IPL of the face and chest); November 17 (IPL of face) and December 27 (pixel of face, neck and eyes).

44. In 2013, Ms. M performed the following cosmetic medical procedures for Patient G: March 21 (pixel treatments of the face and eyes) and July 20 (laser hair removal).

45. In 2014, Ms. M performed the following cosmetic medical procedure for Patient G: February 12 (pixel treatment of face) and February 20 (pixel treatment of face).

2014-0960A

46. Sometime around 2008, the Respondent employed Ms. W[11] as a surgical scrub technician at Facility A. At all times relevant, Ms. W was not licensed by any Maryland health occupation licensing Board.

47. On or about June 5, 2014, a former patient of the Respondent, Patient H, filed a complaint with the Board alleging that Ms. W had performed an abdominal "Coolsculpting"[12] procedure on her at Practice A in July 2013. Patient H stated in her complaint that she had developed a "solid brick size[d] mass" after the procedure.

48. Shortly after receiving Patient H's complaint, Disciplinary Panel A of the Board initiated an investigation.

49. On or about August 28, 2014, the Board's staff notified the Respondent of its investigation of Patient H's complaint, and made an unannounced site visit to Facility A. The Board's staff subpoenaed appointment logs for January 2013 through August 28, 2014 for scheduled Coolsculpting procedures.

50. The Board's staff subpoenaed Patient H's medical record and additional records for patients who had undergone Coolsculpting procedures at Facility A, identified below as Patients I through M.

51. Based on a review of the appointment logs subpoenaed from the Respondent, approximately 246 Coolsculpting procedures had been scheduled to be conducted by Ms. W.

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[11]The Board opened an investigation and charged Ms. W with the unauthorized practice of medicine under MBP Case # 2014-0113.

[12]Coolsculpting, which is cryolipolysis, is a non-invasive localized fat reduction procedure based on the preferential sensitivity of adipose tissue to cold injury.

52. During the August 28 site visit, the Board's staff interviewed the Office Administrator, who stated that until April 15, 2014, when she and the Respondent became aware of the Board's regulations, almost all of the Coolsculpting procedures had been conducted by Ms. W.

53.On or about September 15, 2014, the Respondent submitted a written response to the Board, acknowledging that Ms. W had conducted the Coolsculpting procedures under his supervision, but on notification by the Board in April, he had taken steps to ensure that only licensed individuals performed the procedure.

Patient-related Findings

Patient H

54. On or about July 12, 2013, Patient H, a female in her 50s presented to Facility A, and was evaluated by the Respondent and Ms. W for the Coolsculpting procedure.

55. On July 15, 2013, Ms. W performed the Coolsculpting procedure on Patient H's upper and lower abdominal areas. The Respondent was not present during the procedure.

56. Sometime before Patient H's three-month follow-up visit with Ms. W, Patient H contacted Ms. W to complain of a "solid brick size[d] mass" that had formed on her upper and lower abdomen at the Coolsculpting sites.

57. On or about October 18, 2013, Patient H saw Ms. W for a follow-up visit, but then requested to see the Respondent because of the abdominal masses that had formed. The Respondent evaluated Patient H, and documented that the firmness and swelling

present was persistent post-Coolsculpting inflammation. According to Patient H, during this visit, the Respondent recommended she see a masseuse to massage the area.

58. Patient H returned to the Respondent on two additional occasions in April 2014 to consult with him about her "residual lipodystrophy." The Respondent provided her with possible options, including a refund or complimentary Coolsculpting.

Patient I

59. Patient I was a female in her 50s in November 2012 when she initially presented to Facility A to undergo cosmetic procedures. Between November 2012 and March 2013 she underwent photofacial treatments, IPL, Botox injections and Coolsculpting procedures.

60. Ms. W conducted three Coolsculpting procedures on Patient I's upper, mid and lower back areas in 2013: on February 7, February 19, and March 12.

61. On or about June 11, 2013, Ms. W saw Patient I for a follow-up visit.

Patient J

62. Patient J was a female in her 40s in February 2013 when she initially presented to Facility A for Coolsculpting.

63. Ms. W conducted Patient J's Coolsculpting on the following dates in 2013: February 22 (abdominal areas), March 4 (underarms and inner arms) and March 8 ("love handles").

64. Ms. W conducted Patient J's Coolsculpting on the following dates in 2014: January 30 (underarms and lower abdominal area), February 4 (upper abdomen) and February 10 (underarms).

Patient K

65. Patient K was a female in her 30s in November 2012 when she initially presented to Facility A for Coolsculpting of her lower abdomen and outer thighs. She underwent various cosmetic procedures including liposuction in December 2012 by the Respondent (after attempted Coolsculpting on December 14, 2012 was unsuccessful). Patient K's initial Coolsculpting procedures were conducted by providers other than Ms. W.

66. On April 11, 2013, Ms. W conducted a Coolsculpting procedure of Patient K's mid-abdominal area.

Patient L

67. Patient L was a female in her 30s in October 2012 when she initial presented to Facility A for a consultation for Coolsculpting for her upper and lower abdomen and "love handles."

68. Ms. W conducted Coolsculpting procedures on Patient K on the following dates in 2013: January 7 (upper and lower abdomen), January 22 (upper and lower abdomen), June 11 (upper arms) and June 21.

Patient M

69. Patient M was a male in his 40s in August 2013 when he initially presented to Facility A for a consultation for Coolsculpting for his abdominal and lumbar areas as well as other procedures including surgery for his male gynecomastia.

70. Ms. W conducted Coolsculpting procedures on Patient M on the following dates in 2013: August 7; August 12 (lumbar area) and November 11 (lower abdomen).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Disciplinary Panel A of the Board concludes as a matter of law that the Respondent violated Health Occ. § 14-404(a)(3)(ii) and (18), and Md. Code Regs. 10.32.09.04A.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is, by Disciplinary Panel A, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that no later than **ONE (1) YEAR** from the date of this Consent Order, the Respondent shall pay a monetary fine in the total amount of **TWENTY THOUSAND DOLLARS ($20,000.00)**. 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 subject to a future unannounced site visit by the Board's staff to be conducted at Disciplinary Panel A's discretion, for the purpose of determining compliance with the regulations governing cosmetic medical procedures pursuant to Md. Code Regs. 10.32.09 et seq. An unsatisfactory site visit may be considered a violation of this Consent Order; and it is further

ORDERED that the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; and it is further

ORDERED that if the Respondent fails to comply with any of the terms and conditions of this Consent Order, a disciplinary panel of the Board, in its discretion, after notice and opportunity for a show cause hearing before a disciplinary panel of the Board or an evidentiary hearing at the Office of Administrative Hearings if there is a genuine dispute as to the underlying material facts, may impose additional sanctions authorized under the Medical Practice Act, including a reprimand, suspension, an additional period of probation, revocation and/or a monetary fine; 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.).

12/2/2014
Date

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

CONSENT

I, Dean P. Kane, M.D, 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.

11 24 14
Date

Dean P. Kane, M.D.

Reviewed and Approved by:

Neal M. Brown, Esquire

STATE OF MARYLAND

CITY/COUNTY OF:

I HEREBY CERTIFY that on this 24th day of November, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared Dean P. Kane, M.D. 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: 12/3/17