IN THE MATTER OF	*	**BEFORE THE MARYLAND**
GREGORY O. DICK, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D39825	*	**Case Numbers: 2012-0517 & 2012-0654**

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CONSENT ORDER

On December 3, 2012, the Maryland State Board of Physicians (the "Board"), charged Gregory O. Dick, M.D. (the "Respondent") (D.O.B. 07/07/1954), under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") § 14-101 *et seq.* (2009 Repl. Vol. & 2011 Supp.).

The pertinent provisions of the Act provide the following:

§ 14-404. Denials, reprimands, probations, suspensions, and revocations – Grounds.

(a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(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[.]

§ 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:

(i) Diagnosis;
(ii) Healing;
(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 [.]

I. 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 had petitioned the Board to rule on the delegation of laser hair removal devices 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]

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[1] Light Amplification by Stimulated Emission of Radiation.
[2] Citing I. Dorland, W.A. Newman, Dorland's Illustrated Medical Dictionary, 28th Ed., W. B. Saunders Co., Philadelphia (1994).

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.

II. FEDERAL REGULATION OF LASERS AND IPL'S

Lasers and IPL's[3] used to achieve stable long-term or permanent hair reduction are medical "devices" as defined under the Federal Food, Drug and Cosmetic Act ("Federal Act"). A "device" as defined under 201(h) of the Federal Act, is:

...an instrument, apparatus...or some other similar or related article...which is...

...

> (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."[4]

[3] IPL stands for an Intense Pulsed Light device. An IPL uses intense pulses of broadband light to remove hair and to treat vascular and pigmented lesions.
[4] 21 U.S.C. § 321.

Additionally, lasers and IPL's used to achieve stable long-term or permanent hair reduction are considered to be "prescription devices" pursuant to the Code of Federal Regulations. Prescription devices are defined as:

> ...a device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which 'adequate directions for use' cannot be prepared.[5]

The Food and Drug Administration ("FDA") also regulates radiation-emitting electronic products including lasers and IPL devices, in order to prevent unnecessary exposure to radiation due to the use of these products. Lasers and IPL devices used for stable long-term or permanent hair reduction must also comply with the applicable federal regulations.[6]

FINDINGS OF FACT

The Board finds the following:

GENERAL FINDINGS

1. At all times relevant, the Respondent, a board-certified plastic surgeon, has been licensed to practice in Maryland since April 11, 1990.
2. At all times relevant, the Applicant was in private practice in Rockville, Maryland ("Center A").[7]
3. On or about February 1, 2007 the Respondent hired his wife (Dr. O), an unlicensed physician as a "Laser Specialist" at Center A, and she continued to work in that capacity until January 2011.

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[5] 21 CFR § 801.109 (April 1, 2009).
[6] 21 CFR 1040.10-1040.11.
[7] In order to maintain confidentiality, neither patient nor facility names will be used in this document, but will be provided to the Respondent on request.

4. On or about September 17, 2010, the Board received an anonymous written complaint alleging Dr. O had been acting as a medical doctor in the Respondent's practice.[8]

5. On or about December 10, 2010, the Board received a second anonymous written complaint alleging Dr. O had been acting as a medical doctor in the Respondent's practice.[9]

6. Shortly after receiving the complaints, the Board opened an investigation into the allegations.

7. On January 26, 2012, the Board's staff interviewed Dr. O under oath. Dr. O testified that she had performed laser and IPL procedures beginning in February 2007 to conduct hair removal, reduction of spider veins on legs and the treatment of brown spots and blood vessels on the face. The Applicant also stated that she had begun conducting procedures involving scar revision and wrinkle reduction in September 2007.

8. On or about March 22, 2012, the Board notified the Respondent it had opened an investigation into the allegations.

9. On April 9, 2012, the Respondent submitted a written response to the allegations cited in the complaints. The Respondent stated that prior to January 2011 he had

[8] The Board also opened a separate investigation against Dr. O under Case #'s 2011-0454, 2011-0218 & 2012-0849.

[9] The handwriting on both complaints filed appears to be from the same individual, and according to the Respondent was from a non-patient relative.

no reason to believe that Dr. O required a license to use IPL for cosmetic procedures.[10]

10. On April 10, 2012, the Board's staff interviewed the Respondent under oath. The Respondent testified that he had hired Dr. O to assist with laser treatments at his practice and stated that she had performed hair removal, removal of blood vessels, acne treatments, and photo facial treatments, using a device known as "Palomar" Laser System. [11]

11. The Board subpoenaed appointment logs and medical records during the course of its investigation supporting that the Applicant had performed various laser treatments on multiple patients, some of which are set forth more specifically below.

12. The allegations are set forth more specifically below.

PRACTICE OF MEDICINE WITH AN UNAUTHORIZED PERSON

PATIENT-SPECIFIC FINDINGS

The following patients represent a small sampling of women who received treatments through use of either a laser or IPL, conducted by Dr. O:

PATIENT A

13. Patient A was a 45 year-old female who initially presented to Center A on or about March 24, 2010 for various cosmetic procedures including IPL and laser surgery.

[10] By letter dated January 11, 2011 to the Board, the Respondent notified the Board that he had stopped Dr. O from performing all laser therapy, "in order to make sure that we are in complete compliance with the new regulations."

[11] A brand of lasers and Intense Pulsed Light ("IPL") machines.

14. On or about May 7, 2010, Dr. O obtained "informed consent" from Patient A in order to conduct IPL and laser treatments. The informed consent specified that either "[the Respondent] or his laser specialist" would perform the procedures.

15. Dr. O conducted IPL on Patient A's facial area on the following dates in 2010: May 7, June 3 and July 20.

16. Dr. O conducted laser hair removal on Patient A on the following dates in 2010: October 19 (upper lip and chin), November 18 (upper lip and chin) and December 14 (upper lip and chin).

PATIENT B

17. On June 3, 2010, Patient B was a 46 year-old female who presented to Center A for various cosmetic procedures including IPL and laser hair removal of her lip and chin areas.

18. On June 11, 2010, Dr. O conducted a laser hair removal treatment (upper lip and chin areas) and IPL (face and neck) on Patient B.

19. On August 26, 2010, Dr. O performed a laser hair removal treatment (upper lip and chin) and IPL (chest and neck) on Patient B.

20. On August 27, 2010, Dr. O conducted IPL on Patient B (face).

21. On September 21, 2010, Dr. O performed IPL (chest and neck) on Patient B.

22. On October 5, 2010, Dr. O performed a laser hair removal treatment (upper lip and chin) on Patient B.

PATIENT C

23. On August 19, 2010, Patient C was a 54 year-old female who presented to Center A for IPL and laser treatments of her nose. She had previously been treated with cosmetic surgery by the Respondent.

24. On August 19, 2010, Dr. O obtained "Informed Consent" for Pulsed-Light/Laser treatment from Patient C, for "[the Respondent] or his laser specialist" to perform the procedures, and performed a laser treatment of Patient C's scars on her nose.

25. On October 7, 2010, Dr. O performed a laser treatment (face/nose) on Patient C.

26. On November 16, 2010 Dr. O performed IPL (face area) and laser treatment (nose) on Patient C.

27. On December 23, 2010, Dr. O performed a laser treatment (nose) on Patient C.

PATIENT D

28. On February 21, 2008, Patient D was a 37 year-old female who presented to Center A for laser and IPL treatments for rosacea. She had been treated previously by the Respondent. Dr. O obtained "Informed Consent" for Pulsed-Light/Laser treatment from Patient D, for "[the Respondent] or his laser specialist" to perform the procedures.

29. On February 21 and March 13, 2008, Dr. O conducted IPL treatments to Patient D's cheeks.

30. On April 3, 2008, Dr. O performed IPL (face) and a laser treatment (scar and acne) on Patient D.

31. On May 1, 2008, Dr. O performed a laser treatment (cheek scar) on Patient D.

32. On January 13, 2009, Dr. O performed IPL (face) and a laser treatment (scar) on Patient D.

33. On February 10, 2009, Dr. O performed a laser treatment (cheeks) on Patient D.

34. On December 1, 2009, Dr. O performed IPL (face) on Patient D.

35. On September 23, 2010, Dr. O performed IPL (face) on Patient D.

PATIENT E

36. Patient E was a 41 year-old female who presented to Center A on October 8, 2010 for laser and IPL treatments. She had previously been treated with cosmetic surgery by the Respondent.

37. On October 29, 2010, Dr. O performed laser and/or IPL treatments on Patient E.

PATIENT F

38. On July 22, 2010, Patient F was a 61 year-old female who presented to Center A for IPL of her chest and neck areas. Dr. O conducted Patient F's treatment.

39. On August 6, 2010, Dr. O performed IPL on Patient F's chest and neck areas.

PATIENT G

40. On July 27, 2010, Patient G was a 60 year-old female who presented to Center A for IPL for rosacea. She had undergone a previous surgical procedure by the Respondent. Dr. O obtained "Informed Consent" for Pulsed-Light/Laser treatment from Patient G for "[the Respondent] or his laser specialist" to perform the procedures.

41. Dr. O performed IPL for Patient G on the following dates in 2010: July 27 (cheeks, nose and chin), August 31 (partial cheeks, nose and chin), October 15 (documented only "partial") and October 19 (nose and cheeks).

PATIENT H

42. Patient H was a 58 year-old female who presented to Center A for IPL for a spot on her hand on or about December 31, 2009. Dr. O obtained "Informed Consent" for IPL and laser treatment from Patient I, for "[the Respondent] or his laser specialist" to perform the procedures.

43. On December 31, 2009, Dr. O conducted IPL (hand) and documented that Patient H needed laser (Fraxel treatment) of her eye.[12]

44. On the following dates in 2010, Dr. O performed Fraxel laser and/or IPL treatments to Patient H: February 18 (under eyes and chest), May 4 (under eyes, face and chest), August 12 (face and neck) and August 19 (abdomen and chest).

PATIENT I

45. On or about June 4, 2010, Patient I was a 48 year-old female who presented to Center A for laser treatments. Dr. O obtained "Informed Consent" for IPL and laser treatment from Patient I, for "[the Respondent] or his laser specialist" to perform the procedures.

46. Dr. O performed laser and/or IPL treatments for Patient I on the following dates: June 4, 2010 ("snout" and eyes), July 2, 2010 ("snout" and eyes) and September 24, 2010 ("snout").

PATIENT J

47. On December 29, 2009, Patient J was a 48 year-old female who presented to Center A for laser treatments. Dr. O obtained "Informed Consent" for IPL and

[12] Fraxel is a brand of laser treatment used to treat damaged or wrinkled skin.

laser treatment from Patient J, for "[the Respondent] or his laser specialist" to perform the procedures.

48. Dr. O performed laser treatments for Patient J on the following dates: December 29, 2009 (acne scars and nose veins), April 6, 2010 (acne scars-cheeks) and July 13, 2010 (acne scars cheeks).

PATIENT K

49. On September 30, 2010, Patient K was a 16 year-old female who presented to Center A for laser treatment of two cysts on her upper back. Dr. O obtained "Informed Consent" for IPL and laser treatment from Patient K for "[the Respondent] or his laser specialist" to perform the procedures.

50. Dr. O performed laser and/or IPL treatments for Patient K on the following dates: September 30, 2010 (upper back), October 21, 2010, November 9, 2010 (right shoulder) and December 14, 2010.

PATIENT L

51. On September 21, 2010, Patient L was a 55 year-old female who presented to Center A for laser and/or IPL treatments (face, chest and neck). Dr. O conducted IPL and/or laser treatments (cheeks, chin, chest, eyes, "snout" and nose pores) on that date.

52. On October 14, 2010, Dr. O conducted IPL (face, chest and neck) and laser treatments (eyes, nose pores and "snout") on Patient L.

PATIENT M

53. On May 20, 2010, Patient M was a 60 year-old female who presented to Center A seeking facial rejuvenation.

54. On May 27, 2010, Dr. O obtained "Informed Consent" for IPL and laser treatments from Patient M for "[the Respondent] or his laser specialist" to perform the procedures.

55. On May 27, 2010, Dr. O performed a laser treatment (eyes and lips) on Patient M.

56. On June 15, 2010, Dr. O performed a laser treatment (eyes and lips) on Patient M.

57. On July 1, 2010, Dr. O performed IPL and/or laser treatments (face, neck, eyes, lip) on Patient M.

58. On July 27, 2010, Dr. O performed IPL and/or laser treatments (pores, cheek pores, "snout", neck, abdominal scars) on Patient M.

59. On August 24, 2010, Dr. O performed IPL and/or laser treatments (pores, neck, lip, chest and abdominal scars) on Patient M.

60. On November 2, 2010, Dr. O performed IPL and/or laser treatments (abdominal) on Patient M.

61. On December 2, 2010, Dr. O performed IPL and/or laser treatments (face) on Patient M.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions and inactions as outlined above constitute the practice of medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine in violation of Health Occ. § 14-404(a) (18). The Board agrees to dismiss

the charge of unprofessional conduct in the practice of medicine pursuant to Health Occ. § 14-404(a)(3)(ii).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, by a majority of a quorum of the Board considering this case, it is:

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

ORDERED that within **THIRTY (30) DAYS** of the date of this executed Consent Order the Respondent shall pay a monetary fine in the total amount of **ten thousand dollars ($10,000.00)**. The payment or payments 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 make payment consistent with this Consent Order shall 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 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.).

April 17, 2013
Date

Carole J. Catalfo, Executive Director
Maryland State Board of Physicians

CONSENT ORDER

I, Gregory O. Dick, 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 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.

4/2/13
Date

Gregory O. Dick, M.D.

Reviewed and Approved by:

Thomas J. Sippel, Esquire

STATE OF: MARYLAND

CITY/COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 2nd day of April, 2013, before me, a Notary Public of the foregoing State and City/County personally appeared Gregory O. Dick, M.D, License Number D39825, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public Teresa A. Mellor

Commission expires: 1-15-2015