IN THE MATTER OF	*	**BEFORE THE MARYLAND**
TINA WEST, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D41594	*	**Case Number: 2013-0672**

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CONSENT ORDER

On October 17, 2013, the Maryland State Board of Physicians (the "Board"), charged Tina West, M.D. (the "Respondent"), License Number D41594, under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 14-101 et seq. The pertinent provisions of Health Occ. § 14-404(a) provide the following:

> (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:

> (n) 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...

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 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.

...

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:

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

GENERAL FINDINGS

1. At all times relevant, the Respondent has been licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in 1991, and her license is presently active through September 2015.

2. The Respondent, a board-certified dermatologist, is the owner/medical director of Facility A[3] in Chevy Chase, Maryland. She does not hold any hospital privileges.

3. From approximately January 2007 through sometime in 2013, the Respondent employed Ms. T[4] as an esthetician at Facility A. At all times relevant, Ms. T was not licensed by the Maryland Board of Physicians or the Maryland Board of Nursing. Further, Ms. T was not licensed as an esthetician in Maryland.[5]

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 Ms. T provided several cosmetic procedures at Facility A including "Gentle Waves LED,"[6] Intense Pulsed Light ("IPL"),[7] microdermabrasion, photodynamic therapy, "Refirme,"[8] "Velashape,"[9] 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 present, and acknowledged to the Board's staff

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[3] In order to maintain confidentiality, neither facility nor patient names will be used in these Charges.
[4] The Board opened an investigation and charged Ms. T with the unauthorized practice of medicine under MBP Case # 2013-0673.
[5] The Respondent's actions outlined in these Charges exceed the scope of practice of an esthetician in Maryland.
[6] LED stands for Light Emitting Diode and is a semiconductor light source.
[7] IPL uses the emission of broad spectrum light through intense pulses to improve the appearance of skin and for hair removal.
[8] Laser treatment to stimulate collagen production, mostly used in the head and neck areas.
[9] Velashape is a body contouring procedure combining bi-polar radiofrequency energy and infrared light energy, coupled with vacuum suction and mechanical massage.

that Ms. T had performed procedures at Facility A including laser hair removal, IPL and "Clear and Brilliant" laser therapy.[10]

6. On June 4, 2013, the Respondent submitted a written response to the allegations that Ms. T had engaged in the unauthorized practice of medicine by performing cosmetic procedures as outlined in § 4. The Respondent stated that she would never knowingly permit an unlawful act to take place in her practice. She was not aware that Ms. T was not allowed to perform laser hair removal in Maryland and stated that Ms. T had only performed laser hair removal on a small number of occasions.

7. On June 13, 2013, the Board's staff interviewed Ms. T regarding the allegations that she had engaged in the unauthorized practice of medicine by performing cosmetic procedures as outlined in § 4. Ms. T acknowledged that she had performed procedures at Facility A including IPL, "Clear and Brilliant," laser hair removal and VelaShape,[11]

8. On June 21, 2013, the Board's staff conducted an interview of the Respondent under oath regarding allegations of Ms. T's unauthorized practice of medicine under the Respondent's supervision.

9. The esthetician charge sheet used by Ms. T at Facility A included the following cosmetic procedures: multiple facial procedures using an LED, ReFirme procedures using an "elight,"[12] IPL therapies and laser hair removal.

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[10] Clear and Brilliant is a fractional laser used in the treatment of aging skin.
[11] In the transcript of Ms. T's interview, the procedure was misspelled as "Bella Shape."
[12] A cosmetic skin tightening procedure using a type of laser.

PATIENT-SPECIFIC FINDINGS

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

PATIENT A

11. In November 2012, Patient A was a female in her 30's when she presented to Facility A for cosmetic skin care.

12. On May 20, 2013, Ms. T performed IPL on Patient A for "skin rejuvenation" of her face.

PATIENT B

13. On April 9, 2013, Patient B was a male in his 20's when he presented to Facility A for laser hair removal.

14. On April 9, 2013, Ms. T performed laser hair removal of Patient B's front neck area.

PATIENT C

15. In April 2010, Patient C was a female in her 30's when she presented to Facility A for various cosmetic treatments.

16. On March 6, 2012 and October 1, 2012, Ms. T 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.

17. Ms. T performed LED to Patient C's face on the following dates: October 24, 2011, November 7, 2011, March 6, 2012 and October 1, 2012.

18. On April 10, 2012, Ms. T witnessed Patient C's signature on a consent form for IPL.

19. Ms. T 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.

20. Ms. T performed IPL to Patient C's face and neck on May 20, 2013.

21. On April 16, 2012 and May 2, 2013, Ms. T witnessed Patient C's signature on a consent form for "Clear and Brilliant" laser treatments.

22. Ms. T performed "Clear and Brilliant" laser treatments to Patient C's face and neck area on the following dates: April 16, 2013, May 2, 2013 and May 20, 2013.

PATIENT D

23. In April 2013, Patient D was a female in her 60's when she presented to Facility A for a variety of cosmetic procedures.

24. On May 21, 2013, Ms. T performed IPL on Patient D's face.

PATIENT E

25. In November 2011, Patient E was a female in her 30's when she presented to Facility A for cosmetic procedures.

26. On February 10 and 23, 2012; and March 20, 2012, Ms. T performed laser hair removal of Patient E's underarm area.

27. On February 2, 10, 16 and 23, 2012, Ms. T performed Velashape procedures to Patient E's thighs.

28. On May 21, 2013, Ms. T performed a "Clear and Brilliant" laser treatment to Patient E's face.

PATIENT F

29. In March 2012, Patient F was a female in her 20's when she presented to Facility A for various cosmetic treatments.

30. On May 7 and July 10, 2012, Ms. T performed IPL to Patient F's face.

31. On May 21, 2013, Patient F scheduled an appointment with Ms. T for an IPL procedure. There is no documentation in Patient F's record as to whether the procedure was performed.

PATIENT G

32. In April 2013, Patient G was a male in his 60's when he presented to Facility A for laser hair removal.

33. On April 23, 2013, Ms. T performed laser hair removal to Patient G's genital area.

34. On May 14, 2013, Ms. T performed laser hair removal to Patient G's back area.

PATIENT H

35. In August 2009, Patient H was a female in her early teenage years when she initially presented to Facility A for dermatologic care.

36. On or about December 21, 2012 and March 12, 2013, Ms. T performed laser hair removal to Patient H's underarm area.

37. The procedures conducted by Ms. T as outlined in part above, constitute the unauthorized practice of medicine by Ms. T.

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 and inactions constitute unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404 (a)(3)(ii); and 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), and pursuant to 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 be **REPRIMANDED**; and it is further

ORDERED that within thirty (30) days of the date of this Consent Order, the Respondent pay a monetary fine in the total amount of **FIVE THOUSAND DOLLARS ($5,000.00)**. 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 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, Acting Executive Director
Maryland State Board of Physicians

CONSENT

I, Tina West, 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 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.

2/20/14
Date

Tina West, M.D.

Reviewed and Approved by:

Laurence B. Russell, Esquire

STATE OF : Maryland

CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 20 day of February, 2014, before me, a Notary Public of the foregoing State and City/County personally appeared Tina West, M.D, License Number D41594, 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.

Notary Public

Commission expires:

JEFFREY KRAUTHAMER
Notary Public
State of Maryland
Montgomery County
My commission exp. October 17, 2017