

IN THE MATTER OF	*	BEFORE THE MARYLAND
FAITH DEBRA ESTERSON, M.D.	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: D50904	*	Case Number: 2015-0332A

* * * * *

CONSENT ORDER

On August 17, 2015, Disciplinary Panel A of the Maryland State Board of Physicians (the "Board"), charged **FAITH DEBRA ESTERSON, M.D.** (the "Respondent"), under the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") §§ 14-101 *et seq.* The pertinent provisions of the Act provide the following:

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

H.O. § 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...

Md. Code Regs. ("COMAR") 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 lasers¹ 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.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:

¹ Light Amplification by Stimulated Emission of Radiation.

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

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 10, 2016, a conference with regard to this matter was held before Panel A of the Board's Disciplinary Committee for Case Resolution ("DCCR"). As a result of the DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

I. BACKGROUND

1. At all relevant times, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. She was initially licensed in Maryland on July 16, 1996. Her license is presently active and is scheduled to expire on September 30, 2016.
2. At all times relevant, the Respondent owned Practice A, a private dermatology practice in Pikesville, Maryland.³
3. At all times relevant, the Respondent employed Medical Assistant A, Medical Assistant B and Medical Assistant C, none of whom are or were licensed or

³ In order to maintain confidentiality, names will be used in these Charges. The Respondent may obtain a list of the names referenced in the Charges by contacting the Administrative Prosecutor.

certified by the Maryland Board of Physicians or the Maryland Board of Nursing in any capacity.⁴

4. Medical Assistant A was employed at Practice A beginning in July or August of 2009.
5. Medical Assistant B was employed at Practice A beginning in December 2010.
6. Medical Assistant C was employed at Practice A beginning in July 2013.
7. On or about November 5, 2014, the Board received a complaint from a former patient ("Patient A") of Practice A alleging that the Respondent did not provide an initial consultation prior to Patient A's CoolSculpting procedures and that a technician named "Liz" performed the procedure.⁵
8. Thereafter, the Board initiated an investigation.
9. On or about December 15, 2014, a member of the Board's staff interviewed Patient A, who stated that she paid \$2,000 for CoolSculpting procedures, which were all performed by Medical Assistant A.
10. Patient A further stated that she did not have a consultation with the Respondent prior to the procedures.
11. Medical Assistant A performed three CoolSculpting procedures for Patient A.
12. Patient A stated that on or about June 11, 2014, she informed Medical Assistant A that she was not satisfied with the results. Patient A stated that she "had ten pounds of fat hanging from my stomach, resting on my side." According to

⁴ The Board opened investigations involving Medical Assistant A (Case #2014-0348), Medical Assistant B (Case #2015-0542A) and Medical Assistant C (Case #2015-0541A).

⁵ CoolSculpting is a cosmetic medical procedure that involves the cooling of adipose tissue to induce the breakdown of fat cells.

Patient A, Medical Assistant A told her that the only way to remove the overhang is to have a tummy tuck.

13. Ultimately, Patient A did undergo abdominoplasty which was performed by another physician.⁶
14. Patient A wrote a letter to the Respondent expressing her dissatisfaction. The Respondent gave her a refund of \$600.
15. On or about January 7, 2015, the Board's staff made an unannounced site visit to Practice A. The Respondent and Medical Assistant A were present during the site visit.
16. During the site visit, the Board's staff conducted an interview of Medical Assistant A, who stated that her duties consisted of assisting the Respondent with procedures, performing CoolSculpting procedures, providing chemical peels, light microdermabrasion and radio frequency. Medical Assistant A also discussed various cosmetic options with patients.
17. On February 26, 2015, the Board's staff conducted a follow-up interview of Medical Assistant A. During the interview, Medical Assistant A stated that she provided chemical peels such as Perfect 10 Peel, Topix and SkinMedica from January 2014 until January 2015.
18. Medical Assistant A also stated that she was trained by representatives from the companies that sell chemical peels and that she attended several dermatology meetings and training seminars. Medical Assistant A further stated that she went

⁶ A surgical procedure, also known as a tummy tuck, which involves the removal of excess flesh from the abdomen.

to San Francisco for three or four days to learn how to perform the CoolSculpting procedure.

19. Medical Assistant A stated that she performed the CoolSculpting procedure for one year and estimated that she had performed approximately 300 CoolSculpting procedures, 500 microdermabrasion procedures and two laser hair removal procedures over the previous three years.
20. The Board's staff conducted an interview of Medical Assistant B on February 5, 2015. During the interview, Medical Assistant B stated that her job description included assisting the Respondent by scribing for her, setting up surgical trays, bringing patients to the examination rooms, taking patient information, logging biopsy reports, answering telephone calls regarding prescription refill requests. Medical Assistant B further stated that she "doesn't do any of the services except for assisting [the Respondent] in the rooms."
21. Also on February 5, 2015, the Board's staff conducted an interview of Medical Assistant C. She stated that her job description included "taking down notes and everything while [the Respondent is] in her visits, her exams, put patients in rooms, get their history, chief complaints, get them set up . . . give them gowns for their exams[,] . . . [and] prior authorizations on the phone with insurance companies for medications or procedures."
22. Medical Assistant C denied assisting the Respondent with any cosmetic procedures. She further denied having held and/or operated a device in any way. When questioned regarding whether she operated any of the laser devices at

Practice A, Medical Assistant C stated, "No, I don't even know the difference between them to be honest with you."

23. On March 19, 2015, the Board's staff conducted an interview with the Respondent. The Respondent stated that prior to the Board's investigation, Medical Assistant A performed CoolSculpting, microdermabrasion, chemical peels, VelaShape⁷, Ultherapy⁸; Sublative/Sublime⁹; Medical Assistant B and Medical Assistant C performed XTRAC¹⁰ and phototherapy¹¹. The Respondent also stated that on two occasions Medical Assistant A performed laser hair removal.
24. The Respondent stated that Medical Assistant A "was never delegated to perform laser hair removal . . . and [Medical Assistant A] was instructed that she cannot perform laser hair removal."
25. The Respondent further stated that she was always present, but not necessarily in the treatment area, when the medical assistants were performing the various treatments.
26. The Respondent did seek advice and had no intent to violate the applicable law. Nevertheless the Respondent's delegation of the treatments provided exceeded the scope of care that can be rendered by an unlicensed individual.

II. MEDICAL ASSISTANT A PATIENT-SPECIFIC ALLEGATIONS

⁷ VelaShape uses noninvasive light and radio-frequency waves.

⁸ Ultherapy uses ultrasound to tighten sagging skin.

⁹ Sublative/Sublime uses radiofrequency to improve the appearance of skin.

¹⁰ XTRAC is an excimer laser which uses ultraviolet B to treat skin conditions.

¹¹ Phototherapy uses ultraviolet B light to treat skin conditions.

The following represents a small sampling of patients who received cosmetic medical treatments performed by Medical Assistant A:

PATIENT A

27. Patient A, a female in her 70s, consulted with Medical Assistant A in December 2013 regarding the Coolsculpting procedure.
28. According to the handwritten Cosmetic Flow Sheet in Patient A's medical record, Medical Assistant A performed the CoolSculpting¹² procedure on Patient A's periumbilical skin on December 18, 2013, January 7, 2014 and February 4, 2014.
29. Patient A's medical record also contains electronic medical records ("EMR") for a visit on December 23, 2013, which document a CoolSculpting procedure. The Cosmetic Flow Sheet does not reflect a CoolSculpting procedure on December 23, 2013. In addition, Patient A's medical record lacks a EMR visit note for January 7, 2014.

PATIENT B

30. Patient B, a female in her 40s, presented to Practice A for a CoolSculpting procedure consultation in July 2014. Medical Assistant A evaluated Patient B and recommended six CoolSculpting treatments total for her abdomen and flank.
31. According to the Cosmetic Flow Sheet, Medical Assistant A performed the CoolSculpting procedure on Patient B on July 9, 2014 (lower abdomen) and August 13, 2014 (lower abdomen).
32. Patient B's medical record contains an EMR for a visit on July 17, 2014, which documents a CoolSculpting procedure (left and right flank) on that date. The

¹² The Respondent documented "CoolMax" which represents the use of a larger applicator for the procedures on December 18, 2013 and January 7, 2014.

Cosmetic Flow Sheet does not reflect a CoolSculpting procedure on July 17, 2014.

PATIENT C

- 33. Patient C, a female in her 70s, was a patient of Practice A since at least August 2009.
- 34. According to the Cosmetic Flow Sheet, Medical Assistant A performed the CoolSculpting procedure on Patient C on January 2, 2014 (lateral mid-back) and April 29, 2014.
- 35. Patient C's medical record contains a EMR visit note for April 29, 2014; however, it does not include documentation of a CoolSculpting procedure.

PATIENT D

- 36. Patient D, a female in her 40s, presented to Practice A in December 2013 for a cosmetic consultation.
- 37. On January 15, 2015 and January 22, 2015, Medical Assistant A performed VelaShape procedure on Patient D's abdomen.¹³

PATIENT E

- 38. Patient E, a female in her 20s, presented to Practice A on January 31, 2014 for a CoolSculpting consultation. Medical Assistant A recommended two or three CoolSculpting treatments.
- 39. Medical Assistant A performed the CoolSculpting procedure on Patient E's upper abdomen on February 28, 2014.

PATIENT F

¹³ Portions of Patient D's medical record indicate that she received Zerona laser treatments. The Respondent clarified that Patient D actually received VelaShape treatments, but it was documented as Zerona because Practice A's EMR system did not have VelaShape as an option.

- 40. Patient F, a female in her 70s, presented to Practice A on May 21, 2014 for a CoolSculpting consultation. Medical Assistant A recommended five CoolSculpting treatments.
- 41. Medical Assistant A performed the CoolSculpting procedure on Patient F on June 2, 2014 (upper and lower abdomen) and June 3, 2014 (right and left knees).

PATIENT G

- 42. Patient G, a female in her 70s, presented to Practice A on January 21, 2014 for a CoolSculpting consultation. Medical Assistant A recommended six CoolSculpting treatments.
- 43. According to the Cosmetic Flow Sheet, Medical Assistant A performed the CoolSculpting procedure on Patient G on March 7, 2014 (upper and lower abdomen) and June 13, 2014 (upper abdomen).
- 44. Patient G's EMR also reflects that Medical Assistant A performed the CoolSculpting procedure on Patient G on April 11, 2014 (lower abdomen). This treatment is not documented on the Cosmetic Flow Sheet.

PATIENT H

- 45. Patient H, a female in her 60s, presented to Practice A on February 19, 2014 for a CoolSculpting consultation. Medical Assistant A recommended six CoolSculpting treatments. Patient H also consulted with Medical Assistant A regarding Sublative and Ultherapy.
- 46. On February 28, 2014, Medical Assistant A performed Sublative on Patient H's face.

47. On March 4, 2014 (thighs), March 6, 2014 (abdomen), May 22, 2014 (knees), and May 27, 2014 (upper abdomen), Medical Assistant A performed the CoolSculpting procedure on the Patient H.
48. On March 11, 2014 (mid-lower face) and May 27, 2014 (eyelid and face), Medical Assistant A performed Ultherapy on Patient H.

PATIENT I

49. Patient I, a teenage female, presented to Practice A in 2013 for treatment of various skin rashes.
50. Medical Assistant A performed Sublative on Patient I on February 24, 2014 (arm, trunk and leg), April 1, 2014 (trunk and arm), May 27, 2014 (trunk) and June 24, 2014 (trunk and leg).

PATIENT J

51. Patient J, a male in his 40s, presented to Practice A in October 2014 for laser hair removal.
52. Medical Assistant A performed laser hair removal for Patient J on October 14, 2014.

II. MEDICAL ASSISTANTS B AND C PATIENT SPECIFIC ALLEGATIONS

The following represents a small sampling of patients who received cosmetic medical treatments performed by Medical Assistants B and C:

PATIENT K

53. Patient K, a female in her 40s, became a patient of Practice A in June 2012. Patient K has a diagnosis of psoriasis.
54. On July 8, 2013, February 12, 2013, March 4, 2014, March 6, 2014, and August 11, 2014, Medical Assistant B treated Patient K's scalp with XTRAC.
55. On July 24, 2013, January 2, 2014, January 8, 2014, February 28, 2014, March 26, 2014, August 11, 2014, August 14, 2014, and September 3, 2014, Medical Assistant C treated Patient K's scalp with XTRAC.

PATIENT L

56. Patient L, a female in her 60s, became a patient of Practice A in October 2014. Patient L has a diagnosis of psoriasis.
57. On November 24, 2014, Medical Assistant B treated Patient L's right hand and heels with XTRAC.
58. On November 12, 2014, November 14, 2014, November 17, 2014, December 8, 2014, December 15, 2014, and January 7, 2015, Medical Assistant C treated Patient L's right hand and heels with XTRAC.

PATIENT M

59. Patient M, a female in her 50s, became a patient of Practice A in September 2014. Patient M has a diagnosis of psoriasis.
60. On December 16, 2014, Medical Assistant B treated Patient M's elbows, arms and legs with XTRAC.
61. On October 28, 2014, November 6, 2014, and December 9, 2014, Medical Assistant C treated Patient M's elbows, arms and legs with XTRAC.

PATIENT N

62. Patient N, a female in her 40s, became a patient of Practice A in January 2014. Patient N has a diagnosis of psoriasis.
63. On July 8, 2014, August 6, 2014, September 16, 2014, and November 3, 2014, Medical Assistant B treated Patient N's legs and ears with XTRAC.
64. On June 27, 2014, August 1, 2014, September 29, 2014, November 12, 2014, November 14, 2014, November 19, 2014 and December 5, 2014, Medical Assistant C treated Patient N's legs and ears with XTRAC.

PATIENT O

65. Patient O, a female in her 70s, became a patient of Practice A in September 2014. Patient O presented with complaints of dermatitis unspecified.
66. On September 16, 2014, September 30, 2014 and October 14, 2014, Medical Assistant B treated Patient O's scalp with XTRAC.
67. On September 3, 2014, October 3, 2014, October 17, 2014, November 7, 2014, November 11, 2014 and November 14, 2014, Medical Assistant C treated Patient O's scalp with XTRAC.

PATIENT P

68. Patient P, a female in her 60s became a patient of Practice A in August 2013. Patient P has a diagnosis of psoriasis.
69. On April 24, 2014, May 6, 2014, and August 1, 2014, Medical Assistant B treated Patient P's right thumb with XTRAC.
70. On April 17, 2014, April 21, 2014, June 4, 2014, June 17, 2014, and August 5, 2014 and August 8, 2014, Medical Assistant C treated Patient P's right thumb with XTRAC.

PATIENT Q

- 71. Patient Q, a female in her 70s, became a patient of Practice A in December 2013. Patient Q has a diagnosis of lichen planopilaris.¹⁴
- 72. On February 7, 2014, Medical Assistant B treated Patient Q's scalp with XTRAC.
- 73. On January 17, 2014, Medical Assistant C treated Patient Q's scalp with XTRAC.

PATIENT R

- 74. Patient R, a female in her 60s, became a patient of Practice A in April 2014. Patient R has a diagnosis of psoriasis.
- 75. On June 2, 2014, June 25, 2014, July 21, 2014, August 4, 2014, August 14, 2014, and September 17, 2014, Medical Assistant B treated Patient R's various body parts, including her thighs, abdomen, legs, axilla, hips, knees and ears with XTRAC.
- 76. On July 15, 2014, July 17, 2014, July 28, 2014 and August 11, 2014, Medical Assistant C treated Patient R's various body parts, including her thighs, abdomen, legs, axilla, hips, knees and ears with XTRAC.

PATIENT S

- 77. Patient S, a male in his 60s, became a patient of Practice A in 2010. Patient S has a diagnosis of psoriasis.
- 78. On May 2, 2013, May 7, 2013, June 11, 2013, June 24, 2013, July 25, 2013, August 7, 2013, September 25, 2013, April 1, 2014, May 28, 2014, June 10, 2014, and June 26, 2014, Medical Assistant B treated Patient S's hands and elbows with XTRAC.

¹⁴ A relatively common inflammatory disease that affects the skin and/or inside the mouth, resulting in distinctive skin and/or oral lesions.

79. On August 30, 2013, November 20, 2013, January 15, 2014, April 10, 2014, June 4, 2014, June 19, 2014 and July 14, 2014, Medical Assistant C treated Patient S's hands and elbows with XTRAC.

PATIENT T

80. Patient T, a male in his 30s, became a patient of Practice A in October 2011. Patient T has a diagnosis of psoriasis.
81. On May 31, 2013, October 2, 2013, November 27, 2013 and January 5, 2015, Medical Assistant B treated Patient T's scalp, arms, legs and back with XTRAC.
82. On April 24, 2013, August 30, 2013, November 7, 2013, December 9, 2013, January 17, 2014, February 28, 2014, March 20, 2014, April 24, 2014, May 2, 2014, May 9, 2014, June 18, 2014, July 21, 2014, September 26, 2014, October 24, 2014 and December 10, 2014, Medical Assistant C treated Patient T's scalp, arms, legs and back with XTRAC.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated. H.O. §§ 14-404(a)(3)(ii) and (18).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel A, hereby:

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

ORDERED that no later than **THIRTY (30) DAYS** from the date of this Consent Order, the Respondent shall pay a monetary fine in the amount of **FIVE THOUSAND**

DOLLARS (\$5,000.00). This payment shall be made by certified or bank guaranteed check(s) made payable to the Maryland 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 shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations; 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, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further

ORDERED that this Consent Order shall be a **PUBLIC**.

03/03/2016

Christine A. Lavelly

Date

Christine A. Farrelly, Executive Director

CONSENT

I, Faith Debra Esterson, 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.

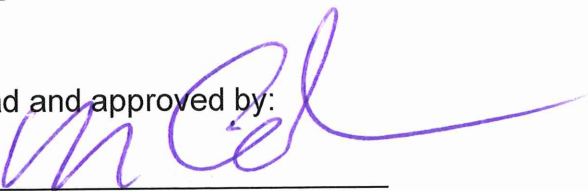
I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections 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.

2/13/2016
Date


Faith Debra Esterson, M.D.

Read and approved by:


Marc Cohen, Esq.

Attorney for Dr. Esterson

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Baltimore:

I HEREBY CERTIFY that on this 13 day of February, 2016 before me, a Notary Public of the foregoing State personally appeared Faith Debra Esterson, M.D., and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires:

12/1/2019

