

Laser Hair Removal: What You Need To Know Before Offering This Popular Procedure

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The unauthorized practice of medicine has grave implications to licensed and unlicensed individuals alike in the area of Laser Hair Removal. Before a practitioner can lawfully offer the use of a soft light laser machine in his/her office to patients they must be aware of the licensure requirements for the operation of certain laser machines or they run the risk of civil, criminal and/or licensure violations.

Presently, lasers used for the simple soft light removal of hair, a procedure utilized by a growing number of practices, has remained unregulated. However, recent communications with the New York State Medical Board regarding this issue has indicated the procedure will be regulated shortly, based upon communications with the New York State Medical Board, wherein Douglas Elkins, an authority from the Medical Board states, "As it stands now, licensure is not required for simple soft light removal of hair. However, medical licensure is required for tattoo removal, spider veins treatment, acne, etc. I predict regulations will be in place requiring medical licensure for hair removal by laser in the near future."

In light of the New York State Medical Board's aforementioned statement, we encourage all practitioners who offer laser hair removal to review the type of laser machines that are utilized in their office space to ensure that the appropriately licensed individuals or those who are properly under the "supervision" of an appropriately licensed individual are the only individuals performing "treatment". As discussed below, unlicensed practitioners, or licensed practitioners allowing unlicensed personnel to practice medicine opens the practitioner to potential civil, criminal and licensure implications should the New York State Department of Health become privy to such conduct.

The issue of who has the authority to effectuate hair removal techniques is not novel and has been commented upon by Courts in the State of New York as early as the 1930s. In a landmark decision, the First Department of the Appellate Division that lay persons may operate electrolysis machines, as the removal of hair, specifically the process of electrolysis, does not constitute the "practice of medicine."¹

Laser technology has changed the face of hair removal. The New York Department of Health has found that the use of lasers in procedures that are "invasive" (i.e., breaks the integrity of the skin) is considered the "practice of medicine" and requires *appropriate licensure* in New York State. Presently, non-invasive laser procedures (i.e., that don't break the integrity of the skin) do not require medical licensure and therefore, a non-licensed person (i.e., a cosmetician) would be entitled to operate the equipment. (Note

¹ People v. Lehrman (1 Dept. 1937) 251 A.D. 451, 296 N.Y.S. 580, affirmed 276 N.Y. 479, 12 N.E.2d 166.

that the FDA regulates the use of certain classes of lasers as well, and as such, the appropriate federal regulations must be consulted for dose limitations).

Additionally, physicians must be cognizant of New York States definition of “supervision”, when their office has other licensed personnel (i.e., nurse practitioners, physician assistants, etc.) providing services. Under Section 6542 of the Education Law, “a physician assistant may perform medical services, but only when under the supervision of a physician and only when such acts and duties as are assigned to him/her are within the scope of practice of such supervising physician.” Moreover, “Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place where such services are performed.” While New York State courts have not specifically defined “supervision” requirement, it has been established that “supervision” certainly does not require a constant presence by the supervising physician of all procedures ordered at their behest. Instead, such standards as an “in-office/suite” requirement have been stated.²

The importance of understanding the licensed individual scope of practice is important. The unauthorized practice of medicine has criminal implications. In 2002, the New York State Attorney General reported that a New Jersey man was arrested on charges of an E class felony known as “Unlicensed Practice of Medicine” for allegedly performing cosmetic surgery and other services to the public without a license. This individual operated what he described as a “skin and laser center” in Manhattan and advertised his business on the Internet as such. On the website he claimed to have certification and expertise in laser hair removal, collagen treatments, acupuncture and tattoo removal, and to be experienced in administering laser treatments. He further had instructed other physicians on how to perform such treatments. The investigation by the State Education Department revealed that the “practitioner” was not licensed in any medical profession. The individual was convicted with three counts of the Unlicensed Practice of Medicine, which carries a maximum of a four year jail sentence. As stated by the then Attorney General Elliot Spitzer, now Governor, “we will continue to prosecute vigorously those who unlawfully practice medicine without a license.”

Furthermore, as stated above, licensed practitioners that aid and abet an unlicensed person to practice medicine also face dire licensure repercussions. In the landmark case of **Doskow v. Nyquist**, the Court upheld a six month suspension of practitioner’s medical license and four and one-half years probation because practitioner knew or should have known that an acupuncturist employed by his practice was not a licensed professional.³

² The following reasoning was stated in **People v. Moser**, where the courts stated in regards to testing, that “although the personal supervision of a physician is an important safeguard for the health of the suspects to be tested, it would be anomalous in light of the proposes of the amendment [allowing laboratory technicians to draw blood samples] to require the physician to put his other duties aside to watch the technician perform the procedure. If that were the requirement, there would be no reason to allow the technician to take the sample in the first place.”] As expressed by the case law, “the concerns addressed by the supervision requirement are adequately served by the physician’s authorization of the test, which presumably reflects his medical judgment that it will not put the patient at risk, and his presence to respond to inquiries and emergencies.” (70 N.Y.2d 476).

³ **Doskow v. Nyquist**, 58 A.D.2d 725 (N.Y.A.D. 1977).

Moreover, practitioner engaged in fee splitting with an unlicensed professional, increasing the severity of his misconduct charges.

In addition to criminal and licensure penalties, the unauthorized practice of medicine may also be pursued in a negligence action for personal injury or death emanating from conduct from persons unauthorized to practice medicine. As indicated above, the legal ramifications for the unauthorized practice of medicine include civil and criminal penalties, as well as potential licensure implications.

Given the stringent measures imposed upon those who are found to be “practicing medicine” without authorization, we urge that if your office does offer Laser Hair Removal, that you be cognizant of current regulations and be sure that only those appropriately licensed or those appropriately licensed and supervised perform the procedure.

For additional information about the unauthorized practice of medicine, please do not hesitate to contact Ms. Kirschenbaum at (516) 747-6700, or Jennifer@KirschenbaumEsq.com.