

**Louisiana State Board of Medical Examiners**  
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**\*\*\* STATEMENT OF POSITION \*\*\***

LA. REV. STAT. §37:1261-92

**USE OF MEDICAL LASERS,**  
**CHEMICAL SKIN TREATMENTS**

**REVISED—November 13, 2001**

In recent months, the Louisiana State Board of Medical Examiners (the “Board”) has received a number of inquiries and complaints from physicians and others respecting the utilization of medical lasers and the application of chemical peel skin treatments by non-physicians in the absence of on-site or adequate physician direction and supervision. In consideration of this issue the Board is given to understand that medical lasers, as well as acidic solutions and chemicals in concentrations that may affect living skin tissue or alter or cause biological change or damage below the stratum corneum, are being utilized for treatment of a variety of conditions, either individually or in combination with others (“laser or chemical treatments” or “treatments”).

We understand that these treatments are being offered to the public and performed in some instances in offices, walk-in clinics, spas, hair and other salons and even health clubs by non-physicians with infrequent or no physician supervision. Such inquiries and complaints—and the Board’s own investigation—suggest that some firms and individuals offering laser or chemical treatments may function through various arrangements among owners/managers of the equipment or facilities, physicians and medical equipment companies. It also appears that such services may be promoted by medical equipment manufacturers or suppliers who de-emphasize the need or requirement for on-site physician supervision, offer weekend training seminars to non-physicians which focus on operation of equipment and application of treatments and, we have been informed, for a fee are even willing to refer prospective purchasers of equipment to physicians who are available, also for a fee, to serve in title (but not in physical presence) as “medical directors” for non-physician operated/owned enterprises. Typically, the personnel actually performing such treatments do so in the absence of a physician, in most instances with individuals presenting themselves without a physician’s prescription, prior examination, diagnosis, referral, informed consent or appropriate instructions for follow-up care. In this context such an individual may act either wholly without physician authority, with laser or chemical treatments being performed by one who has little or no academic or clinical medical education or training whatsoever. In other instances the non-physician may act pursuant to a standing protocol or “blanket” authorization of a physician who may either own or be employed by the venture or for compensation serve in title as the “medical director” but who has no role in the day-to-day operation or supervision of the enterprise and is not physically present at all times when such services are being performed.

The concerns expressed to the Board over the administration of laser or chemical treatments with

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inadequate or no physician supervision are consistent with those reported in a survey recently released by the American Society for Dermatologic Surgery (“ASDS”). According to that organization’s survey of its 2,400 members, approximately 45% of respondents indicated an increase over the past year in the number of patients seeking corrective treatment for complications such as burns, splotching and irreversible pigmentation or scarring due to laser or chemical treatments that were performed by non-physicians or in the absence of appropriate physician supervision. More than five hundred (500) cases involving complications were included in the information reported. The survey results were attributed primarily to the practice of increasingly aggressive and invasive procedures by paraprofessionals, technicians or employees of physicians who are not adequately trained or supervised. And while the information reported by the ASDS is concerning in and of itself, it expressed the view that the survey results may not fully represent the severity of the problem, noting that many cases and complications go unreported as a result of pending litigation, reluctance to seek curative measures and patients’ failure to recognize misdiagnoses.<sup>1</sup>

The Louisiana State Board of Medical Examiners (the “Board”) first addressed itself to the use of medical lasers, chemical peels and other treatments of the skin in 1997.<sup>2</sup> At that time it emphasized that the use of medical lasers, when used by individuals other than trained physicians, could result in seriously debilitating and deforming injuries including blindness. For similar reasons the Board noted that the use of chemical peels or treatment of the skin through application of such techniques, particularly involving the use of alphahydroxy acid in concentrations greater than 14%, presents a clear potential for causing severe scarring when used by persons who do not have the knowledge or training to understand the risks of acid peels or to prevent or manage consequent injuries. Given such developments the Board then expressed its opinion that the use of lasers or alphahydroxy acid in a concentration exceeding 14% for peeling or other chemical treatments of the skin constitute the practice of medicine and may be performed or undertaken in this state only by a physician licensed to practice medicine by the Board or by another appropriately trained and licensed allied health professional acting under the direction and supervision of a licensed physician. Since issuance of our last Statement, our investigation reveals that a number of chemicals other than alphahydroxy acid are being employed, either individually or in combination, for peels, cosmetic or other chemical treatments of the skin, *i.e.*— glycolic acid, lactic acid, resorcinol, salicylic acid, trichloroacetic acid, *etc.* Unfortunately, these chemicals carry an equal or even greater potential risk of danger to the public as alphahydroxy acid, when used for chemical peel or in other treatments of the skin by non-physicians or in the absence of adequate physician supervision, *i.e.*—scarring, systemic toxicity, respiratory, circulatory and central nervous system irregularities and even death. No doubt that future developments and commercial interest in cosmetic applications will lead to the use of other chemicals and new products that pose equally as significant a risk of danger and adverse consequences as those identified in this Statement due to their capacity to affect living skin tissue or alter or cause biological change or damage below the stratum corneum.

That the use of lasers or chemical treatments for therapeutic or cosmetic purposes constitutes the practice of medicine is unequivocally clear. As defined by the Louisiana Medical Practice Act the scope of the “practice of medicine” explicitly encompasses:

[T]he holding out of one’s self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human

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<sup>1</sup>*Complications from the Non-Physician Practice of Medicine, American Society for Dermatologic Surgery* (Aug. 2001).

<sup>2</sup>*Statement of Position, Use of Medical Lasers, Alphahydroxy Acid, La. St. Bd. Med. Exam.* (March 26, 1997).

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being...whether by the use of any drug, instrument or force...or any other agency or means....

La. Rev. Stat. §37:1262(1). [Emphasis supplied]

Even beyond the comprehensive scope of this definition, several years ago the Louisiana Legislature emphasized the substantial risks, dangers and potential complications inherent in the use of medical lasers by enacting a statute expressly declaring that “[O]nly persons licensed under the laws of this state to practice medicine, veterinary medicine, dentistry, or podiatry shall perform laser surgery.”<sup>3</sup> Thus, as a matter of law, and in the opinion of the Board, there can be no doubt but that the use of laser or chemical treatments for therapeutic or cosmetic purposes constitute the practice of medicine<sup>4</sup> which only physicians licensed to practice medicine in this state have the authority to perform.<sup>5</sup>

Nevertheless, it has long been the position of the Board that physicians may delegate certain medical procedures and functions that constitute the practice of medicine to non-physicians under specific conditions and safeguards. The Board’s traditional view of delegation of such authority has uniformly required physician on-site supervision and direction of any non-physician in the performance of medical activities involving patient treatment. As was the case when it issued its prior Statement, the Board perceives no reason to justify deviation from its traditional view of delegation as to laser or chemical treatments. That is, neither the spirit nor intent of the prior Statement was contemplated to deviate from its traditional view. To the extent that it may have been misconstrued, because the Board’s position may affect parties other than those with which it has communicated directly, and in light of the fact that inquiries concerning its position in this area are recurring, the Board has concluded that it is timely and appropriate that its views on this subject be expressed in a formal revised Statement of Position.

Accordingly, it is the position of the Board, equally as an interpretation of applicable law and as a matter of safe practice of medicine, that:

- Whether used or applied for surgical, therapeutic or cosmetic purposes on human beings the use of lasers or chemical treatments constitute the practice of medicine under Louisiana law.
- Such treatments may be performed or undertaken only by a physician currently licensed to practice medicine by the Board or by a non-physician who acts under the direct supervision of a Louisiana licensed physician who mutually observe the following conditions:
  - (1) A physician must insure that any non-physician acting under his supervision is appropriately trained and qualified to perform the tasks or treatments that are delegated;
  - (2) All treatments and procedures must be performed under the licensed physician’s direction and immediate personal supervision—*i.e.*, where the physician is physically present on the premises and immediately available at all times that the non-physician is on duty and retains full responsibility to patients and the Board for the manner and results of all services rendered.

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<sup>3</sup>Acts 1991, No. 433, La. Rev. Stat. §37:1274.1.

<sup>4</sup>Our Statement of Position would be equally applicable to the use of any light source, microwave energy, chemical application, the injection or insertion of foreign or natural substances or soft tissue augmentation.

<sup>5</sup>By explicit statutory provision, veterinarians, dentists and podiatrists may also utilize lasers within the authority and limitations of law governing their professions. La. Rev. Stat. §37:1274.1.

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- (3) A non-physician serving in such a position could not—and may not under any circumstances be permitted to—act independently or in the absence of a Louisiana licensed physician or exercise independent medical judgment in implementing any procedure or modality of treatment.
- (4) In the context of this Statement, an “appropriately trained and qualified” non-physician who assists a physician in the performance of laser or chemical treatments should possess, at a minimum, training in safety, application techniques of each system, cutaneous medicine, indications/contraindications for such procedures, pre-operative and post-operative care, potential complications and infectious disease control involved with each treatment.
- (5) As is the case with any medical procedure or treatment the standard of care requires that such treatments be preceded by a history, an appropriate physical examination conducted by a physician, a diagnosis which confirms that any treatment recommended is appropriate for the patient’s condition, informed consent, availability and instructions for emergency and follow-up care and the preparation of an appropriate medical record.

Non-physicians who perform laser or chemical treatments in contravention to the manner expressed herein will necessarily be engaged in the unauthorized practice of medicine as defined by Louisiana law. Such conduct is a crime punishable by incarceration for up to five (5) months and a criminal fine of up to \$500.00 *for each such offense*.<sup>6</sup> The Board is constrained to refer individuals engaged in such activities to the Louisiana Attorney General and/or the local district attorney for criminal prosecution, file a civil injunction against any continued practice and seek civil penalties and attorney’s fees associated therewith.<sup>7</sup> A physician who participates in such a relationship or acts inconsistent with this Statement in any respect will be subject to disciplinary action by the Board, which may include revocation or suspension of licensure, a fine of up to \$5,000 and imposition of all costs of the Board’s proceedings, including attorney’s fees,<sup>8</sup> as a result of engaging in medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state; assisting a non-physician practice medicine; and having professional connection with, or lending one’s name to, an illegal practitioner.<sup>9</sup>

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<sup>6</sup>La. Rev. Stat. §37:1290.

<sup>7</sup>La. Rev. Stat. §§37:1271 and 37:1286.

<sup>8</sup>La. Rev. Stat. §37:1285C.

<sup>9</sup>La. Rev. Stat. §37:1285A(14), (18).