



*The Maryland State Medical Society*

## Delegation rules with respect to cosmetic procedures

The Medical Practice Act defines the “practice of medicine” as to “engage, with or without compensation, in medical diagnosis, healing, treatment, or surgery.” It specifically includes “diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual by physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both, or by appliance, test, drug, operation, or treatment. HO 14-101(o).

In general, persons wishing to practice medicine as defined above must be licensed physicians. However, the Medical Practice Act creates several exceptions, including one that provides certain procedures can be delegated by physicians to persons who are not licensed. The Board of Physicians has issued regulations outlining what procedures can be delegated, to whom can they be delegated and under what circumstances.

The performance of “cosmetic medical procedures” and the use of “cosmetic medical devices” by non-physicians are governed by specific regulations. A “cosmetic medical procedure” is a “procedure using a cosmetic medical device or medical product to improve an individual's appearance.” Certain procedures are specifically included within the definition such as “skin treatments using lasers; skin treatments using intense pulsed light; skin treatments using radio frequencies, microwave, or electric pulses; deep skin peels; skin treatments with phototherapy; microdermabrasion; subcutaneous, intradermal, or intramuscular injections of medical products; treatments intended to remove or cause destruction of fat; and any treatment using a cosmetic medical device for the purpose of improving an individual's appearance.” COMAR 10.32.09.02.B(5). A “cosmetic medical device” includes the following when used for cosmetic purposes: laser; device emitting light or intense pulsed light; device emitting radio frequency, electric pulses, or sound waves; microdermabrasion device; and devices used for the injection or insertion of foreign or natural substances into the skin, fat, facial tissue, muscle, or bone.” COMAR 10.32.09.02.B(4).

Cosmetic medical procedures, including the use of cosmetic medical devices, can only be performed by a physician, a physician assistant to whom the physician delegates the task, or an individual licensed by a board created under the health occupations act whose board permits that individual to perform the task. “Medical Assistant” is not a health occupation under Maryland law, so “medical assistants” may not perform cosmetic procedures. Nor may “aestheticians,” as, although they are licensed under Maryland law, their licensure is not under the Health Occupations article. Also important to note, is that Maryland law now prohibits a physician from performing a “cosmetic surgery procedure” in an office or facility that has not been accredited by a specified accrediting organization or certified by Medicare. HO

§ 14-404(a)(41). Not included in this prohibition are “procedures done under local anesthesia or mild sedation and liposuction that removes less than 1,000 cubic centimeters of aspirate,” with the caution that the Secretary of the Department of Health and Mental Hygiene has the power to include those procedures by regulation. HO § 14-101(e).

The Board of Nursing classifies cosmetic procedures into different groups. At this time, the most legally significant of those groups are Category C, which includes “laser treatments administered by a selective laser.” Category C treatments may be performed by an RN but may not be performed by an LPN. Category F includes “peels or topicals with chemical peels,” “cryotherapy,” microdermabrasion,” and “power peels.” Category F does not require an on-site physician presence during the performance of the procedure, with the exception of cryotherapy, which does require on-site physician presence.

Both the Board of Physicians and the Board of Nursing have detailed regulations regarding the performance of cosmetic procedures, including requirements for the training of anyone performing them, and including both physician and the assisting health professional. These **must** be thoroughly reviewed by all health professionals involved. They may be reviewed on-line at the following links:

[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.09.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.09.*) (physicians and physician assistants)

[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.27.25.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.27.25.*) (nurses)

The regulations regarding the delegation of non-cosmetic procedures are somewhat less restrictive but are also important to review and may be found at

[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.03.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.03.*) (Physician Assistants)

[http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.12.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.32.12.*) (others)

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