

STATE OF CONNECTICUT
BOARD OF EXAMINERS OF HYPERTRICHOLOGISTS

Dawn Posta
License No. 000314

Petition No. 990804-015-001

MEMORANDUM OF DECISION

Procedural Background

The Department of Public Health ("the Department") presented the Connecticut Board of Examiners of Hypertrichologists ("the Board") with a Statement of Charges ("the Charges") brought against Dawn Posta, dated May 16, 2000. (Dept. Exh. 2.) The Charges allege that the respondent violated § 20-271 *et seq.* of the Connecticut General Statutes.

On June 27, 2000, the Department sent the Notice of Hearing and Statement of Charges to the respondent via certified mail, return receipt requested. (Dept. Exh. 1.)

On July 5, 2000, the respondent filed an Answer. (Bd. Exh. 1.)

On September 20 and October 11, 1999, the Board held an administrative hearing on the Charges. The respondent appeared and was represented by Attorney Ira Charmoy, Esq.; Attorney Leslie Scoville, Esq. represented the Department. Both the Department and the respondent were provided the opportunity to present testimony, cross-examine witnesses, and provide documentary evidence and legal argument on all issues.

The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes, and § 19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies ("the Regulations").

This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

Allegations

1. In paragraph 1 of the Charges, the Department alleges that Dawn Posta of Stratford, Connecticut ("the respondent") is and has been at all times referenced in the Charges, the holder of Connecticut hypertrichology license number 000314.
2. In paragraph 2 of the Charges, the Department alleges that on or about November 19, 1999, the respondent performed laser hair removal on patient J.G.
3. In paragraph 3 of the Charges, the Department alleges that the respondent performed laser hair removal on J.G. in an office that sustained fire damage.
4. In paragraph 4 of the Charges, the Department alleges that from August of 2000 until approximately October of 2000, the respondent performed laser hair removal.¹
5. In paragraph 5 of the Charges, the Department alleges that the allegations contained in paragraphs 1 through 4 constitute grounds for disciplinary action pursuant to § 20-271 of the Connecticut General Statutes.

Findings of Fact

1. The respondent is, and has been at all times referenced in the Charges, a hypertrichologist and the holder of Connecticut hypertrichology license number 000314, and owns "Aesthetics and Wellness" located at 220 Huntington Avenue, Stratford, Connecticut ("the premises"). (Bd. Exh. 1; Dept. Exh. 4.)
2. On August 18, 1999, Karen Wilson, who is a special investigator with the Department, spoke with the respondent regarding a letter Ms. Wilson sent to the respondent advising her that she was not authorized to use a laser in her capacity as a hypertrichologist. The respondent denied using or possessing a laser. Instead, the respondent claimed that she provided consultation and referral for laser hair removal treatment. (Tr. 9/20/00, 40.)
3. On October 15, 1999, there was a fire at the premises. (Tr. 9/20/00, 45.)
4. On November 16, 1999, Department investigator Jolanta Gawinski spoke with the respondent and scheduled an appointment for November 19, 1999 at 2:00 p.m. for laser hair removal treatment to be performed at the premises. (Tr. 9/20/00, 20.)

¹ The Department orally moved to amend the Charges to add paragraph 4. That Motion was granted without objection. (Tr. 10/11/00, 25.)

5. On November 19, 1999, several windows at the premises were boarded up with plywood and there was no sign to identify the facility. (Tr. 9/20/00, 20.)
6. When Ms. Gawinski entered the premises on November 19, 1999, the respondent directed her to wait in the kitchen until the respondent finished with a prior customer. (Tr. 9/20/00, 21.)
7. The kitchen had an old wooden table and two chairs, and open cupboards that were empty and covered with dirt and soot. The smell of smoke was pervasive throughout the premises, including in the treatment room. (Tr. 9/20/00, 21.)
8. After approximately ten minutes, the respondent led Ms. Gawinski to the treatment room and discussed the laser hair removal treatment. There was a laser machine present in the room behind the door. (Tr. 9/20/00, 21-22; Dept. Exh. 4.)
9. The respondent owned the laser hair removal machine that was present on November 19, 1999, for which she paid \$90,000.00. (Tr. 10/11/00, 9.)
10. On November 19, 1999, the respondent provided laser treatment to Ms. Gawinski's arm and scheduled a follow-up appointment for retreatment of the area on December 17, 1999. (Tr. 9/20/00, 24-25; Dept. Exh. 4.)
11. On November 19, 1999, the respondent informed Ms. Gawinski that, although the Department had specifically advised her that providing laser hair removal treatment was not something she was authorized to do, she intended to ignore the Department and continue providing such treatment. (Tr. 9/20/00, 26.)
12. From August of 2000 through October of 2000, the respondent performed laser hair removal treatments. (Tr. 10/11/00, 29-30; Dept. Exh. 5.)
13. A laser is a means of manipulating light. (Dept. Exh. 4.)
14. The use of a laser to remove hair is a medical, not cosmetic, procedure. Such a procedure alters the surface of skin. (Dept. Exh. 4.)
15. A laser may cause or aggravate certain types of dermatological conditions. (Dept. Exh. 4.)
16. A laser can also cause eye damage. (Dept. Exh. 4.)
17. Consequently, a licensed physician with appropriate knowledge, experience, and training should assess each patient prior to and during the course of hair removal treatment with laser therapy. At the minimum, a physician should provide direct on-site supervision in the course of hair removal treatment with laser therapy and such treatment should only be done by health care professionals as authorized in Conn. Gen. Stat. § 20-9(b)(14). (Dept. Exh. 4.)

18. The respondent did not produce any evidence at the hearing before this Board in this case to show that she is licensed to practice medicine in this state or that she is otherwise exempted from the provisions of Conn. Gen. Stat. § 20-9.
19. Laser hair removal is an evolving technology which does not currently provide permanent results. (Dept. Exh. 4.)

Discussion and Conclusions of Law

Section 20-271 of the Connecticut General Statutes states in relevant part:

The license of any hypertrichologist in this state may be revoked or suspended by the board, or such hypertrichologist may be the subject of any action set forth in section 19a-17, after notice and hearing, on the recommendation of the board for any cause named below . . . fraudulent or deceptive conduct in the course of professional services or activities or illegal, incompetent or negligent conduct, in his practice . . .

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995. The Department met its burden of proof as to the allegations contained in paragraphs one, two and four of the Charges.

The respondent treated Ms. Gawinski with laser on November 19, 1999, without the necessary medical expertise to do so. She admitted continuing to perform such treatment on clients after the Department commenced this disciplinary action against her, notably from August 2000 through October 2000. In performing such treatment without the requisite medical skills, she exposed her clients to eye damage and certain types of dermatological conditions. Her conduct in this regard constitutes illegal, incompetent or negligent conduct in the practice of hypertrichology in violation of Conn. Gen. Stat. § 20-71.

In addition, Conn. Gen. Stat. § 20-267 defines "the practice of hypertrichology" as "the permanent removal of superfluous hair by electrical or other methods approved by the Commissioner of Public Health". Laser hair removal is an evolving technology

which does not currently provide permanent results. The respondent knew this because an agent of the Commissioner of Public Health informed her and, in any case, as a professional, she should have known that laser was not an appropriate means for permanently removing hair. Thus, in offering laser treatment to her clients, she engaged in fraudulent or deceptive conduct within the meaning of Conn. Gen. Stat. § 20-71 in that she misled her clients into believing that laser treatment was an appropriate method for permanently removing superfluous hair.

The respondent's conduct was reprehensible. As a professional, she knew or should have known that laser treatment was not an appropriate method for permanent hair removal. Moreover, the respondent flagrantly disregarded notice given to her by Department staff advising her that she was practicing beyond the scope of her license. This wilful violation of her professional responsibilities can not go unpunished.

The Department failed to sustain its burden of proof as to the allegations contained in paragraph three of the Charges. Although the respondent's house was incontrovertibly fire damaged, no evidence was submitted that the damage extended to the office/room used by the respondent to perform hypertrichology services.

Nevertheless, the respondent's illegal and incompetent conduct in performing laser treatment without the requisite medical knowledge as well as her fraudulent or deceptive conduct are adequate bases upon which to issue the following order pursuant to the General Statutes of Connecticut § 20-271.

Order

Pursuant to the authority vested in it by § 19a-17 and § 20-271 of the Connecticut General Statutes, the Board hereby orders the following in this case against the hypertrichology license of Dawn Posta, license number 000314:

1. The respondent's license is suspended for a period of six months. All three originals of the respondent's license shall be returned to the Department within ten days of the effective date of this Order.

2. The respondent shall pay a civil penalty of five thousand dollars (\$5,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.
3. Violation of any term(s) of this Order, and/or continued performance of laser hair removal, and/or practicing beyond the scope of practice as a hypertrichologist, may subject the respondent's license to additional sanctions pursuant to § 19a-17 *et seq.* of the Connecticut General Statutes, including but not limited to, revocation of her hypertrichology license.
4. The respondent shall be responsible for all costs associated with satisfaction of this Order.
5. This order is effective as of the date of signature.

Connecticut Board of Examiners for Hypertrichologists

Nov 29, 2006

Date

Lawrence M. Jacoby, MD
By: Lawrence Jacoby, MD, Chairperson