

Laser Hair Removal

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“I’m tired of all this nonsense about beauty being skin-deep. That’s deep enough. What do you want – an adorable pancreas?” – Jean Kerr, “Mirror, Mirror on the Wall, I Don’t Want to Hear One Word Out of You” in *The Snake Has All the Lines*, 1960.

Introduction

Laser hair removal is a one of the more popular minimally-invasion cosmetic procedures; in 2006 there were about 887,000 laser hair removal procedures, placing laser hair removal third behind chemical peels and Botox® in terms of numbers of procedures performed.¹

Laser hair removal works by using a laser to locate the hair, then “stun” it. The hair then falls out. The laser, delivered in bursts over a small area of skin, detects the pigment in the hair against the background skin color; the contrast of dark hair on light skin gives the best contrast, and usually better results than other combinations of hair and skin color.² Darker skin, for example, may require use of a lower powered laser (and hence more treatments).³

One laser pulse can cover more than one hair, providing a quicker treatment when compared to techniques such as electrolysis. About one-third of the hairs do not grow back after a treatment. Complete hair removal will most likely involve multiple treatments.

Questions about whether the technique is a medical procedure, and who should be able to perform the procedure, have been raised. The Texas Medical Board attempted to formulate a rule designed to answer those questions; this rule was challenged by lawsuits, and then those lawsuits were abated when legislation on the subject was introduced into the Texas legislature.

Currently the situation is at a stalemate. The Legislature has not enacted legislation on laser hair removal, the lawsuits remain undecided, and the Texas Medical Board has recently decided to repeal the rule. The uncertainty leaves physicians, non-physician providers of the service, and potential clients without clear guidance regarding whether laser hair removal is a medical procedure, and what qualifications may be demanded of those performing the procedure.

Underlying Issues

As the practice of minimally invasive cosmetic procedures, such as laser hair removal, expands from the offices of dermatologists and plastic surgeons into non-medical settings, there is debate over who should perform the procedure and what qualifications

¹ *Top Five Minimally-Invasive Cosmetic Procedures in 2006*, (Listing 4.1 million Botox® procedures, 1.1 million chemical peels, and 887,000 laser hair removal procedures for 2006), available at http://www.plasticsurgery.org/media/press_releases/2006-Stats-Overall-Release.cfm.

² See <http://www.bcm.edu/plasticsurgery/general/interactive.cfm> for details on the procedure (select *Laser Hair Removal*).

³ *Laser Hair Removal*, <http://www.bcm.edu/dermatology/?PMID=1903>.

should be required of those providing the services. Laser hair removal regulation tangentially involves underlying financial and scope of practice issues.

Physicians argue that laser hair removal is a medical procedure that should be performed by physicians or those under the direct supervision of a physician. This argument points out that laser hair removal involves the use of a medical laser, and the procedure involves risks of burning and scarring, as well as other potential complications. Furthermore, physicians are concerned that businesses practicing laser hair removal are motivated primarily by profit, and do not operate in an environment cognizant of the demands of a physician-patient relationship (driven by the primary concern of protecting the health and welfare of the patient).

Those advocating the availability of laser hair removal in non-clinical settings suggest that lasers are safer and less invasive than traditional hair removal techniques, such as electrolysis. Laser hair removal, the non-physicians and their supporters, point out, is no more invasive than other forms of hair removal currently practiced in a “beauty salon” setting, such as electrolysis and waxing. There is also the suggestion that physicians are concerned with maintaining their dominance in a lucrative field that could safely be opened to competing non-physicians.

The Laser Rule

The Laser Rule, governing the use of lasers in hair removal, was created when the Texas Medical Board (“TMB”) was asked for guidance from a physician wishing to delegate use of an Epilight laser.⁴

In 2003, the TMB set forth guidelines related to the “delegation of health care tasks to qualified non-physicians.”⁵ The TMB considered the welfare and health of patients being served by qualified non-physicians, and the delegation of health care tasks by a supervising physician. The Texas Medical Board also sought to establish guidance regarding the use of lasers in laser hair removal, referred to as “The Laser Rule.”⁶

The Laser Rule was drafted to establish guidelines for the delegation of laser use, under the supervision of a physician, to a non-physician for non-ablative⁷ procedures only (such as laser hair removal) and to regulate laser hair removal facilities. The effective date of the Laser Rule was November 2003. The prospective enforcement date was supposed to be December 2004.⁸

Litigation & Legislation

The authority of the TMB to establish certain provisions of the Laser Rule was challenged prior to the enforcement date in two lawsuits for Declaratory Judgment filed

⁴ Texas Medical Board, *Laser Rule Update, III. Development of Rule on Use of Lasers* available at <http://www.tmb.state.tx.us/rules/laserrule.php>.

⁵ Texas Medical Board, *Standing Delegation Orders*, <http://www.tmb.state.tx.us/rules/laserrule.php>

⁶ TMB Rules, Sec. 193.11, Use of Lasers (22 TAC 193.11).

⁷ *Id* at §193.11 (b)(2) defining non-ablative treatment as “Non-ablative treatment shall include any laser/intense pulsed light treatment that is not expected or intended to remove, burn, or vaporize the epidermal surface of the skin. This shall include treatments related to laser hair removal.”

⁸ This was to allow time for practitioners to come into compliance.

in Travis County.⁹ These lawsuits challenged the physician supervision and training requirements set forth in the Laser Rule.

In December 2004, the presumptive enforcement date of the Laser Rule, the plaintiffs in *Laser Stakeholders* were granted a Temporary Restraining Order and an Order for Injunctive Relief.¹⁰ As a consequence, the Laser Rule was not enforced according to its original timetable.¹¹

The TMB and the *Finder* and *Laser Stakeholder* plaintiffs agreed to abate the cases and enforcement of the Laser Rule, pending action by the Texas Legislature.¹² Legislation was introduced to the 79th Session of the Texas Legislature, but was not enacted.¹³

Two more bills were subsequently introduced to the 80th Legislative Session of the Texas Legislature. One, House Bill 174 (“HB 174”), addressed the regulation of laser hair removal facilities and provided civil penalties for non-compliance. House Bill 3368 (“HB 3368”), provided for physician delegation and supervision of non-physicians performing the procedure. Again, neither bill was enacted.

HB 174 was authored by Rep. Vicki Truitt. Under HB 174 laser hair removal procedures were classified as “neither the practice of medicine nor a medical procedure.”¹⁴ The bill required certification for non-physician personnel performing laser hair removal procedures. There were three proposed levels of certification: (1) a Senior Laser Hair Removal Technician, (2) a Laser Hair Removal Technician, and (3) and an Apprentice-in-Training certificate, each with its own level of training and experience. In addition, there were civil penalties for failing to comply with the regulation specified in HB 174.

On March 8, 2007, Rep. Byron Cook of Navarro filed HB 3368 in the 80th Legislative session of the Texas Legislature. HB 3368 differed significantly from HB 174 in that HB 3368 stated that “laser hair removal treatments, procedures or services are the practice of medicine and may only be performed or delegated in accordance with this [Medical Practice] Act.”¹⁵ The supervision of technicians performing laser hair removal procedures, by a delegating physician, was required under this bill.¹⁶

⁹ *Dr. Steven Finder, Dr. Kimberly Finder, & Smooth Solutions, LP vs. Texas State Board of Medical Examiners*, Cause No. GN400891, filed on March 16, 2004, and *Laser Hair Removal Stakeholders Group v. Texas State Board of Medical Examiners, and Donald W. Patrick, M.D., Executive Director*, Cause No. GN403910, filed on December 1, 2004.

¹⁰ Texas Medical Board, *The Laser Rule Update, IV. Current Status of Enforcement of Rule 193.11*, <http://www.tmb.state.tx.us/rules/laserrule.php>.

¹¹ At the December 10, 2004 meeting of the Texas State Board of Medical Examiners, the TMB voted to abate the lawsuits and enforcement of the Laser Rule until after the Texas Legislature had the opportunity to consider pending legislation. <http://www.tmb.state.tx.us/professionals/calendar/minutes/doc/2004/December04/>.

¹² TMB, *Information and Current Standing: Standing Delegation Orders and Rule 193.11 Use of Lasers*, <http://www.tmb.state.tx.us/rules/laserrule.php>.

¹³ *Id.* stating that “Purposes of the 2005-2006 agreements to continue abatement include the following: (1) provide opportunity for the House Public Health Committee to consider Interim Charge 5 . . . Evaluate the need for regulation of laser hair removal facilities in Texas and the need for certification of individuals performing laser hair removal procedures; and (2) provide opportunity for TMB to consider rules regarding prescription medical devices that might resolve some of the issues.”

¹⁴ HB 174, 79th Leg., (Tx 2005).

¹⁵ HB 3368, 80th Leg., (Tx 2007).

¹⁶ *Id.* at §157.152 (c): “Supervision is considered to be adequate for the purposes of this section if a delegating physician: (1) is geographically located so as to be physically present daily to provide medical care and supervision; (2) is available through direct telecommunication for consultation, assistance and direction; (3) assures that patients are adequately informed and have signed consent forms prior to treatment that outline reasonably foreseeable side effects and complications that may result from the non-

In addition, educational and training requirements were outlined for laser hair removal technicians working under the delegation or supervision of the physician. This training included: continuing education, infection prevention training, basic life support training, and safety and quality training relating to the procedure.¹⁷ Under HB 3368, the potential patient had to undergo pre-treatment physical examination requirements to check for medical conditions such as skin cancer or other skin lesions (which might cause complications) and to assure that the potential patient was a “qualified candidate for treatment.”¹⁸ It was originally intended to be effective on September 1, 2007.

HB 3368 clearly envisioned defining laser hair removal as a medical procedure. Byron Cook, the bill’s author, was quoted as saying: “If you think about, the laser can do the same thing as a scalpel . . .[s]o, to me it’s important we have a medical professional involved in this procedure.”¹⁹

Current status

Most recently, at the February 7, 2008 Meeting of the Disciplinary Process Review Committee of the Texas Medical Board, the Committee unanimously agreed that repeal of The Laser Rule should be on the agenda for the April 2008 meeting.²⁰ As a result, the regulation of laser hair removal in Texas remains an open question at the current time.

Closing Thoughts

Given the lack of regulation in the area, the availability of the procedure in a store-front like setting, and the possibility of harm to the client/patient, it would seem prudent to seek qualified practitioners to perform the laser hair removal procedures.

While the battle over laser hair removal regulation includes monetary gain and scope of practice, in the end the real issue should be patient health and safety. Laser hair removal involves certain levels of risk, including those of scarring and burning, which suggest that it is more of a medical procedure than a beauty salon technique.

Physicians trained in laser hair removal are educated to recognize potential complications inherent to the procedure, and to respond to complications should they arise.²¹ Certain medications, for example, may alter sensitivity to light, consequently influencing the effect the laser may have on the skin. A physician, through his or her medical training and continuing education, is better educated to recognize potentially contraindicated ablative treatment; (4) is responsible for the formulation or approval of the physician’s order, standing medical order, standing delegation order, or other order for protocol and periodically reviews the order or protocol and service provided to a patient under the order or protocol; (5) reviews and signs, at least annually, the written protocol and any patient specific deviations from the protocol regarding care provided to a patient under the protocol on a schedule defined in the written protocol; and (6) has established a physician-patient relationship with each patient who is provided laser hair removal services or procedures.”

¹⁷ *Id.* at §157.153, *Education and Training Requirements for Laser Hair Removal Technicians*.

¹⁸ *Id.* at §157.155, *Pre-treatment Requirements*.

¹⁹ Jessica Wiley, *Patients warned to check out medi-spas before treatment*, ABC/13 EYEWITNESS NEWS, May 6, 2007, available at http://consumerblog.abc13.com/2007/05/patients_warned.html.

²⁰ Texas Medical Board, *Minutes of the Disciplinary Process Review Committee*, February 7, 2008, available at <http://www.tmb.state.tx.us/professionals/calendar/minutes/doc/2008/feb7/08FebDPRC.htm>. (The Committee considered that “this was a difficult area and they did not want to set any rules related to this area,” particularly with regards to the physician supervision requirements under the Laser Rule.)

²¹ *Ask Questions Before Laser Hair Removal*, BAYLOR COLLEGE OF MEDICINE PRESS RELEASE, June 3, 2003, available at <http://www.bcm.edu/news/item.cfm?newsID=299>.

medications than a spa technician with limited, or no, medical training.

In addition, physicians are arguably better equipped to recognize and properly manage medically relevant circumstances extraneous to the aesthetic procedure itself. For example, one scholarly article estimates that as many as 47.7% of patients presenting for cosmetic procedures may fulfill the criteria of mental disorders such as body dysmorphic disorder (5-15% of patients), narcissistic personality disorder (25%), and histrionic personality disorder (9.7%).²² A qualified physician would be more likely to have the requisite medical background to recognize potential mental health symptoms and make referrals to colleagues in the mental health discipline where indicated. It is not likely that a non-physician in a spa setting would have the equivalent insight, or the motivation to deny paying services due to a concern about the client's motivation.²³

When contemplating laser hair removal, the American Society for Dermatologic Surgery²⁴ has offered guidance in selecting who and where the potential client should the procedure:

- 1 Be cautious when considering having the procedure performed by a non-physician.
- 2 Ask basic questions to protect yourself: What does the procedure entail? What type of laser will be used? Who will perform the procedure, and what training do they have? Are former clients/patients available to discuss their experiences?
- 3 Check for potential side effects *before* the procedure by having a skin test.
- 4 Ask the physician if they have experience treating your skin type and color. Do not use tanning lotions or tan prior to the procedure.
- 5 Consider other methods of hair removal for lighter hair colors.
- 6 Mention any medications you may be on; light-sensitivity may be altered by taking certain medications and may make you more susceptible to complications such as scarring and burning.

With the legislation stalled, the lawsuits undecided, and the Texas Medical Board offering no immediate guidance regarding laser hair removal in Texas, the potential client/patient should be proactive in selecting who performs the technique, where to seek the procedure, and asking questions to protect themselves.

Health Law Perspectives (April 2008), available at:
<http://www.law.uh.edu/healthlaw/perspectives/homepage.asp>.

²² Ritvo EC, Melnick I, Marcus GR, and ID Glick, *Psychiatric Conditions in Cosmetic Surgery Patients*, 22(3) FACIAL PLASTIC SURG. 194-7 (2006), citing Ishigooka J, Iwao M, Suzuki M, et al., *Demographic Features of Patients Seeking Cosmetic Surgery*, 52 PSYCHIATRY CLIN NEUROSCI. 283-287 (1998).

²³ *Id.* at 195 (Noting that "[r]ecognizing the patient's pathology allows the clinician to remain calm, think clearly, and decide the most appropriate course of action, which may range from cautious use of cosmetic procedures to a refusal to provide care and a referral to a mental health professional." This contrasts to membership plans based on selling packages of services on either a monthly, or a bundled procedure basis, such as an "All Laser Service Plan" priced at about \$149 per month and including laser hair removal, vein therapy, laser peels, and photo facials.)

²⁴ American Society for Dermatologic Surgery, *Do's and Don'ts for Laser Hair Removal*, <http://www.asds.net/DosAndDontsLaserHairRemoval.aspx> (last accessed April 6, 2008)