

May 7, 2018

The Honorable Eric L. Lipman
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164

RE: Proposed Changes to Minnesota Rules, Chapters 2105 and 2110

Dear Judge Lipman:

On behalf of the Minnesota Society of Plastic Surgeons (MSPS) and the American Society of Plastic Surgeons (ASPS), we are writing in regard to the proposed changes to Minnesota Rules, chapters 2105 and 2110. The Minnesota Society of Plastic Surgeons is the largest association of plastic surgeons in Minnesota, and in conjunction with our national affiliate the American Society of Plastic Surgeons, collectively represent 120 board-certified plastic surgeons in the state. Our mission is to advance quality care for plastic surgery patients and promote public policy that protects patient safety.

We appreciate that the proposal by the Board of Cosmetologist Examiners (Board) would: (1) prohibit cosmetologists and estheticians from being able to penetrate beyond the stratum corneum of the epidermis; (2) remove the reference to cosmetologists and estheticians being allowed to perform chemical peels and replace it with a reference to primary exfoliation; (3) clarify that nail technicians may not penetrate the skin; (4) make it illegal to advertise as a “medical esthetician” or “medical aesthetician”; and (5) increase the number of hours required for continuing education (CE) from four to eight.

While we appreciate the aforementioned aspects of the proposal, we are concerned with the scope of procedures provided to the newly created “advanced practice” estheticians under 2105.0105. Under this proposal, these providers would be able to perform exfoliation of the epidermis through manual, mechanical, and chemical means, as well as perform electrical energy treatments including light therapy, galvanic current, microcurrent, radio frequency, and other energy treatments.

Electrical energy treatments, otherwise referred to as laser procedures, are extremely safe and effective when used by medical professionals with appropriate training and oversight. However, they can cause painful burns and permanent scarring in the wrong hands. Even when used at the manufacturer’s recommended settings, these devices can cause profound skin injury. For instance, despite only one-third of laser hair removal procedures being performed by non-physicians (including nurses, nurse practitioners, estheticians, or “technicians”), they accounted for 76% of injury lawsuits from 2002-2012. This number jumped to 85.7% of lawsuits filed between 2008-2012, with 64% of treatments performed outside of a traditional medical setting.

According to the American College of Surgeons, laser procedures fall squarely within the definition of surgery¹:

¹ State of the states: Defining surgery. The Bulletin. <http://bulletin.facs.org/2012/05/state-of-the-states-defining-surgery>. Published June 6, 2016. Accessed December 19, 2017.

Surgery is performed for the purpose of structurally altering the human body by incision or destruction of tissues and is part of the practice of medicine. Surgery also is the diagnostic or therapeutic treatment of conditions or disease processes by any instruments causing localized alteration or transportation of live human tissue, which include lasers, ultrasound, ionizing radiation, scalpels, probes, and needles. The tissue can be cut, burned, vaporized, frozen, sutured, probed, or manipulated by closed reduction for major dislocations and fractures, or otherwise altered by any mechanical, thermal, light-based, electromagnetic, or chemical means. ...All of these surgical procedures are invasive, including those that are performed with lasers, and the risks of any surgical intervention are not eliminated by using a light knife or laser in place of a metal knife or scalpel...

For patient safety and quality outcomes, it is critical that all lasers and intense pulse light (IPL) devices are only operated by physicians or other licensed medical professionals who are properly trained to perform or assist in surgery under direct physician supervision. These licensed professionals include physician assistants (PAs), nurse practitioners (NPs), advance practice registered nurses (APRNs), and registered nurses (RNs) who are acting within the scope of their licensure and are under a physician's supervision. They should not include estheticians or "advanced practice" estheticians who have no medical training regardless of the number of CE hours performed.

Therefore, 2105.0010 must include a definition of "electrical energy treatment" that specifically excludes the use of lasers and laser-assisted devices to provide clarification that "advanced practice" estheticians may not use lasers and laser-assisted devices, which are defined in Minnesota law as the practice of medicine.² Furthermore, we recommend the addition of two other definitions – one for stratum corneum and one for epidermal dermal junction. These are necessary to further establish the difference in scope of practice between basic estheticians and "advanced practice" estheticians, and would ensure that the Board would provide adequate guidance and consistent administration of the rule regarding the scope of practice of "advanced practice" estheticians.

We respectfully urge the Board to allow only licensed medical professionals to use lasers, light-based hair removal or reduction devices, chemical treatments, and electrical energy treatments. Therefore, we request that you amend the proposal to provide clarification as to which procedures are within the scope of practice of "advanced practice" estheticians and basic estheticians. Thank you for your consideration of our position on this important issue. Please do not hesitate to contact Patrick Hermes, ASPS's Director of Advocacy and Government Relations, at pghermes@plasticsurgery.org or (847) 228-3331 with any questions or concerns.

Sincerely,

Jeffrey E. Janis, MD, FACS
President
American Society of Plastic Surgeons

Sue-Mi C. Tuttle, MD
President
Minnesota Society of Plastic Surgeons

² M.S. §147.081, Subd. 3(4)