

Laser Hair Removal and Laser Tattoo Removal

The North Carolina Medical Board continues to receive questions regarding laser cosmetic procedures, specifically laser hair removal and laser tattoo removal. The Board offers this document as guidance to physicians and non-physicians who have questions.

This guidance document describes the Board's position that: (1) the use of a laser for hair removal or tattoo removal constitutes surgery and thus the practice of medicine; (2) FDA-approved laser devices used for hair removal or tattoo removal must be owned by a physician to avoid the unauthorized practice of medicine; (3) any patient treated with an FDA-approved laser device should first be examined by a physician; (4) any person that operates a laser for hair removal or tattoo removal must be a physician or supervised by a physician; and (5) it is a violation of North Carolina law for persons other than licensees of this Board to engage in the practice of medicine. However, notwithstanding these requirements, there are straightforward ways in which physicians can work with non-physicians (and businesses owned by non-physicians) that wish to be involved in laser hair or tattoo removal.

The following are some frequently asked questions the Board receives from licensed healthcare practitioners and other individuals regarding laser hair removal or tattoo removal services.

1) Who may operate the laser during a laser hair removal or laser tattoo removal procedure?

Response:

A physician may operate lasers that are used for hair and tattoo removal, if the physician is trained and qualified to use that particular laser. And, any individual designated by a physician as having adequate training and experience may operate a medical laser while working under a physician's supervision. A supervising physician should assure herself/himself that a non-physician is adequately trained, competent and experienced to use a medical laser safely before the physician delegates this task to the non-physician. By delegating the task of using a medical laser to a non-physician, the supervising physician is attesting to the Board and the public that the non-physician is competent to use the medical laser safely.

In addition electrologists who are licensed as laser hair practitioners pursuant to the Electrolysis Practice Act, N.C. Gen. Stat. § 88A-11.1, may perform laser hair removal (but not tattoo removal) under the supervision of a physician.

2) What are the supervising physician's responsibilities when supervising laser hair and tattoo removal procedures?

Response:

The Board expects any physician who provides supervision to::

- Provide adequate oversight of licensed and non-licensed personnel both before and after the procedure is performed.
- Ensure that each patient is examined by a physician, physician assistant or nurse practitioner prior to receiving the first laser hair or tattoo removal treatment and at other times as medically indicated.
- Ensure that the examination includes a history and a focused physical examination.
- If prescription medications, such as topical anesthetics, are used, to follow the guidelines set forth in the Board's Position Statement titled "Contact with Patients Before Prescribing."
- If medication is prescribed or dispensed in connection with laser hair or tattoo removal, assure the patient receives thorough instructions on the safe use or application of the medication.
- Be on site or readily available to the person actually performing the procedure. "Readily available" will depend on a variety of factors. Those factors include the specific types of procedures and equipment used; the level of training of the persons performing the procedure; the level and type of licensure, if any, of the persons performing the procedure; the use of topical anesthetics; the quality of written protocols for the performance of the procedure; the frequency, quality and type of ongoing education of those performing the procedures; and any other quality assurance measures in place.
- Be able to respond quickly to patient emergencies and questions by those performing the procedures.

3) What are the consequences should a physician fail to provide proper supervision of an individual operating a medical laser or otherwise provide care not in accordance with acceptable and prevailing standards of medical practice when it comes to laser hair or tattoo removal procedures?

Response:

If a physician fails to provide proper supervision of a non-physician operating a laser or that a physician provided substandard care in the provision of laser hair or tattoo removal services, then the Board may invoke its investigative and disciplinary powers. The Board investigates all complaints of inappropriate care and allegations of violations of the Medical Practice Act. After an investigation, if the Board has probable cause to believe that a violation of the Medical Practice Act has occurred, the Board may take private or public action, including disciplinary action against a licensee. Based on the facts and circumstances of each case, the Board may issue a private letter of concern, ask the licensee to appear for an investigative interview before the Board, issue a non-disciplinary public letter of concern or take some form of disciplinary action. Disciplinary actions can range from a reprimand up to suspension or revocation of a license. Furthermore, all disciplinary actions may be accompanied by a fine.

4) Who may own a practice that provides laser hair removal and/or laser tattoo removal services?

Response:

Because the Board considers laser surgery such as laser hair and tattoo removal to be the practice of medicine, only an individual licensed to practice medicine or perform medical acts, tasks and functions or licensed as a laser hair practitioner may own a practice that provides laser hair and/or tattoo removal services. A physician may own such a practice, and a physician assistant, nurse practitioner, or electrologist licensed as a laser hair practitioner practicing under a physician's supervision may own such a practice. Furthermore, a combination of physicians, physician assistants and nurse practitioners pursuant to N.C. Gen. Stat. § 55B-14(c) may own a medical practice that provides laser cosmetic services.

5) May someone other than a physician, physician assistant, nurse practitioner, or electrologist licensed as a laser hair practitioner own a business that provides laser hair or tattoo removal services?

Response:

No. As stated above, the Board considers laser surgery such as laser hair and tattoo removal to be the practice of medicine. Only an individual licensed to practice medicine and to perform medical acts, tasks and functions may own a business that provides medical services. An individual who is sufficiently trained and qualified to operate a medical laser may work at a medical practice as an employee and operate a laser under the supervision of a physician in a manner consistent with the expectations of the Board as set out in the Board's Laser Surgery Position Statement.

6) If someone not licensed or approved by the Board already owns and operates a business providing laser hair or tattoo removal, how can the owner modify the business to avoid the unlicensed practice of medicine?

Response:

This process has three components:

- *Sale of laser practice: Since only physicians, physician assistants and nurse practitioners ("licensed practitioners") are authorized to own a medical laser, the unlicensed non-physician owner of the laser could consider selling the laser to a licensed practitioner who has prescriptive authority. (The unlicensed owner could also sell the entire practice to a licensed practitioner.)*

- *Role of non-licensed practitioner: What often occurs in this situation is that the unlicensed person enters into a Management Services Contract with a licensed practitioner who has purchased the medical laser (or the entire practice). The licensed practitioner is permitted to compensate the unlicensed person for management services in the form of managing the office, performing billing services, marketing and advertising the practice or other activities that do not constitute the practice of medicine.*
- *Compensation arrangements: In addition, the licensed practitioner could compensate the unlicensed person as an employee or contractor actually performing laser hair or tattoo removal under the supervision of a physician (assuming that the non-licensee has adequate training and skills). However, a licensed practitioner would not be permitted to split fees with the unlicensed person on a per-procedure or percentage basis for medical services provided. Instead, the licensed practitioner would need to compensate the unlicensed person based on a salary or hourly wage to avoid improper fee splitting.*

Another option for the unlicensed person to perform laser hair removal (but not tattoo removal) would be to train and become licensed as an electrologist and a laser hair practitioner pursuant to N.C. Gen. Stat. § 88A-11.1.

7) What are some of the possible consequences should the Board learn that someone is performing laser hair or tattoo removal services without appropriate supervision by a physician?

Response:

Because the Board considers laser hair removal to be surgery and thus the practice of medicine, only a physician or individual appropriately supervised by a physician (including a laser hair practitioner) may use a medical laser to perform hair removal. Therefore, in the Board's view, an unlicensed and unsupervised person performing laser hair removal would constitute the unlicensed practice of medicine. The unlicensed practice of medicine is a crime in North Carolina pursuant to N.C. Gen. Stat. § 90-18(a). Moreover, performing laser hair removal without a license to practice as a laser hair practitioner constitutes a Class I felony pursuant to N.C. Gen. Stat. § 88A-4. N.C. Gen. Stat. § 90-14.12 and N.C. Gen. Stat. § 88A-22 empower the Medical Board and the State Board of Electrolysis Examiners to seek injunctions in civil Superior Court to enjoin unlicensed individuals from practicing medicine or performing laser hair removal. Furthermore, N.C. Gen. Stat. § 90-18 authorizes the Medical Board to report allegations of unlicensed practice to the local district attorney where the violation is alleged to have occurred for possible investigation and prosecution.

Because the Board also considers laser tattoo removal to be surgery and thus the practice of medicine, only an individual licensed to practice medicine or a person supervised by a physician may use a medical laser to perform tattoo removal.

Therefore, in the Board's view, an unlicensed and unsupervised person performing laser tattoo removal would constitute the unlicensed practice of medicine as described above with regard to laser hair removal.

If you have additional questions, please feel free to call the North Carolina Medical Board at (919) 326-1100 or the North Carolina Board of Electrolysis Examiners at 336-856-1010.