

Laser Hair Removal in the Big Apple Can I offer it? And, do I need a license?

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There have been more questions than answers on whether non-medical personnel may perform laser hair removal in New York, and whether a non-medical spa or salon may offer such services. In fact, the legislature has considered the issue during several sessions without passing any bills that would prohibit non-medical professionals from rendering such services.

Recently, a wave of activity has flowed in the Big Apple on this topic, with the New York Department of State (the agency tasked with licensing and overseeing appearance enhancement licensees and estheticians) taking matters into their own hands. What happened was a customer complained to the Department about laser burns at an appearance enhancement business, an investigator was sent out and the appearance enhancement business failed to have certain requirements in place. As a result, the Department filed a complaint against the owner and business. A hearing was held and the Department used the forum as an opportunity to introduce testimony to sway the judge to rule the services rendered were, in fact, medical by nature, and therefore prohibited for an appearance enhancement licensee (and, therefore, for an esthetician). The appearance enhancement business did not have an attorney, and the testimony was entered, and the judge did decide in his opinion that laser and non-ablative radio-frequency procedures were the practice of medicine and beyond the scope of the appearance enhancement license. The ramifications of this decision were enormous – if upheld and enforced, all non-medical businesses and non-medical personnel performing laser services would potentially be operating illegally and would be at risk of being shut down by the Department of State.

In the wake of this decision, the Department of State did initiate investigations into certain appearance enhancement businesses and charge them with the “unlawful practice of medicine” for providing laser services. One such appearance enhancement business was represented by our firm, and during the course of our representation some interesting and reportable developments occurred that heavily weigh on who and what business may perform laser services, as follows:

- **The first main development** was that on June 14, 2010, the Department of State General Counsel drafted a letter stating that “**laser hair removal services may be offered in licensed appearance enhancement salons by licensed estheticians and cosmetologists**”, so long as the appearance enhancement salon promulgates it is not regulated in any way by the Department of State.
- **The second main development** is that **in our decision, the presiding judge ruled in our favor**, establishing that the precedent previously established was incorrect, that the laser services at issue had not been properly classified as medical in the prior decision, and that **our client, an appearance enhancement business, was not unlawfully practicing medicine by advertising laser services**. (The Department of State’s appeal on this matter is still pending.)

For those out there providing or looking to provide laser services, there is a light at the end of the tunnel. Even with the varying directives from state agencies and differing legal

opinions out there, enough information is known for you to properly structure and offer laser services. The first step is to identify and work with competent counsel that may navigate the tricky New York landscape, which is different than any other state. By way of an example, New York is one of the few states that prohibits a doctor from working for a lay entity. As a result, those out there structured with a “medical director”, may want to seek a regulatory review to ensure that you are structured properly; especially since the Department of State has increased its audit activity.

For more information on this topic, contact Jennifer Kirschenbaum, Esq. at (516) 747-6700 x. 302 or at Jennifer@Kirschenbaumesq.com. Jennifer Kirschenbaum, Esq., of Kirschenbaum & Kirschenbaum, P.C., regularly represents and advises businesses on the integration of laser services, and regulatory compliance and litigation matters. Erica Youngerman, Esq. is an associate at Kirschenbaum & Kirschenbaum, P.C. and assists in the representation of clients in licensure matters, regulatory compliance and transactional structuring. Kirschenbaum & Kirschenbaum, P.C. is a general practice law firm located in Garden City, New York. For more information about the firm, visit www.kirschenbaumesq.com.