Laser treatment for dermatological purposes: Who can perform these procedures in Michigan?

By Robert S. Struey

Laser treatment has been utilized with limited frequency for certain dermatological applications such as the removal of tattoos, acne scars, port wine stains, and skin biomas for over a decade. However, in recent years, laser treatment has grown significantly in popularity, which has subsequently increased the demand for providers of laser treatment.

Since state law governs the issue of who can perform these procedures, it is of significant importance to all current and prospective providers of laser treatment. The Michigan Department of Community Health (MDCH) at this time rules that a laser is "to be defined" under Michigan law, outlining the Michigan Public Health Code delegation provisions regarding the use of lasers for dermatological purposes.

In a recent opinion on September 5, 2005, the Michigan Department of Community Health (MDCH) released a position statement regarding the use of laser equipment by health professionals, which clarifies the relevant law on the subject.

Delegation authority

According to MDCH's position statement, "laser treatment falls within the Michigan Public Health Code's definition of the practice of medicine because the treatment involves the "diagnostic, treatment, or prophylactic use of a human disease, ailment, defect, complication, or other physical condition; reduction by attendance, service, device, diagnostic test, or other means." Thus, generally speaking, dermatological procedures should be performed by a licensed physician.

However, MCCLA 333.16276 permits a "licensee, registrant, or other individual to perform laser procedures to individuals, and the procedure as long as it is performed under the supervision of a licensed physician.

Notably, delegation will not be permitted unless the physician has knowledge and consents to the laser treatment procedure being performed by a non-physician. This delegation further permits physician assistants and nurse practitioners to perform these laser procedures without supervision, as long as the procedure is performed in a medical facility in accordance with the "Medical Public Health Code (i.e., a hospital)." It should also be noted that the delegation provision does not permit physicians to delegate the authority to perform these laser procedures to someone else.

What is supervision?

The key aspect of this delegation authority for laser procedures, as noted and clarified in MDCH's position statement, is the definition of "supervision." As all providers of laser treatment should be well aware, the ultimate responsibility for the tasks and duties performed by any delegated individual falls on the licensed physician.

A licensed physician should perform extensive research on the background, education, training, and experience of any prospective delegated individual to ensure the individual is duly qualified as it is reasonable to assume in practice appropriate education or training may entail at least a certification in laser treatment.

Supervision entails the overseeing or participation in, the work of another individual by a licensed health professional, in circumstances where at least some of the following conditions are met:

- Acknowledged by the physician that the delegated individual has the appropriate education, training or experience to properly use lasers.
- Continuous availability of direct communication with, or by telephone or otherwise, the physician and the delegated individual.
- Regularly scheduled availability of the physician to consult, educate, and review the records and practice of the delegated individual in laser use.
- Development by the physician of written protocols and procedures to guide the delegated individual's laser use.
- The physician's high level of care and attention to the delegated physician and must ensure that the delegated physician has full and regular access to the supervision of the physician.

The licensed physician is not only ultimately responsible for the outcome of the treatment, but is also required to be readily available to assist by telephone or in person to the delegated individual at all times.

Limited application

The delegation provision at MCLA 333.16276 is limited in application to the specific lasers for "dermatological purposes" noted in the statute. It entails any purpose relating to the diagnosis and treatment of medical conditions not only necessary and cosmetic conditions of the skin, hair, and nails by various surgical, reconstructive, cosmetic, and laser surgical methods.

Therefore, this provision permits the delegation of such procedures as laser hair removal or acne scar removal, but it does not permit the delegation of other laser procedures unrelated to the practice of dermatology such as laser eye surgery.

A licensed physician who is considering delegating the authority to use laser treatment for dermatological purposes should address the issue in a prudent and thorough manner, as Michigan's law on the issue is stringent. Specifically, utmost care must be taken when determining whether an individual has the appropriate qualifications and training to perform the laser procedures.

This compliance corner provides a tool to assist licensed physicians contemplating this delegation.

Tip 1 — Make sure to do your homework when selecting a delegated individual’s laser use.

Pursuant to MDCH's position statement, a delegated individual can be a licensed, or unlicensed, individual.

With that said, it is recommended that the licensed physician perform extensive research on the background, education, and training of any prospective delegated individual to ensure the individual is duly qualified, as it is reasonable to assume in practice appropriate education or training may entail at least a certification in laser treatment.

In short, licensed physicians would be well-advised to err on the side of "over-qualified" when selecting a delegated individual, on the understanding that in the end, any person must keep in mind that he or she is ultimately responsible for the performance of any of the delegated procedures.

Tip 2 — Do not overlook the requirement to establish written procedures or protocols to safeguard the delegation of individual's laser use.

A physician should provide a delegated individual with comprehensive written training regarding the laser treatment to be performed.

Additionally, a physician must create a detailed written protocol or protocol for the delegated individual's use. This protocol must be in the form of a manual, with all of the necessary information, for the particular individual.

The required duties and tasks of the delegated individual should be clearly stated in this document.

Further, the performance of the delegated person should be regularly reviewed and evaluated. The delegated individual's protocol must be maintained and reviewed in accordance with the delegated individual.

The delegated individual must be able to demonstrate that the protocol is in place and properly followed. The licensed physician must be able to provide documentation of the delegated individual's performance.

(For the complete document, please see the original document for more detailed information.)

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