

**LEGAL AFFAIRS**

1625 North Market Blvd., Suite S 309, Sacramento, CA 95834  
P (916) 574-8220 F (916) 574-8623 | www.dca.ca.gov



# MEMORANDUM

Agenda Item 9-A

Date: June 15, 2007

To: Members  
Division of Medical Quality  
Medical Board of California

From: Anita Scuri  
Legal Affairs Division  
Supervising Sr. Counsel

Re: **PROPOSED PRECEDENTIAL DECISION**  
*In the Matter of the Accusation Against Joseph J. Basile, M.D.*  
Case No. 03-2000-108170  
OAH No. N2002050521

In accordance with the procedure adopted by the Division of Medical Quality in July 2004 (Exhibit 1), the Office of the Attorney General has recommended that portions of the above-captioned decision be designated as Precedential. The executive director, chief of enforcement and I all agree with this recommendation.

## Procedural Background

Dr. Basile ("respondent") was the subject of an Accusation and several amendments thereto. The matter was heard before Administrative Law Judge Jonathan Lew, who submitted a Proposed Decision to the Division on July 16, 2004. The Division non-adopted that decision and remanded the matter to the administrative law judge for the taking of additional evidence on specified issues.

After the nonadoption and prior to the remand hearing, the parties reached a stipulated agreement, which was adopted by Panel A of the Division on May 18, 2006. That stipulated decision adopted the Proposed Decision of Administrative Law Judge Jonathan Lew except for paragraph 10 of the Legal Conclusions and the original Order at page 13 of the proposed decision. It increased the period of probation from 3 years to 4 years and struck the cost recovery order (the latter modification resulting from the change in law effective January 1, 2006 eliminating cost recovery by the board). Despite the matter having been resolved by stipulation, the Division's stipulated decision adopts the Proposed Decision and therefore its decision may be designated as Precedential since it resulted from a contested hearing.

### **Facts/Findings of the Case**

The Accusation charged respondent with a variety of violations, all stemming from his involvement as “medical director” in a medical office called “The Vein & Cosmetic Enhancement Center” or “VCEC.” VCEC was not a professional medical corporation owned by physicians but was instead a general law (nonprofessional) corporation wholly owned by respondent’s wife. Respondent’s wife is not a physician or any other type of licensed health care professional.

VCEC used lasers and intense pulsed light (“IPL”) to treat varicose and spider veins. The details regarding the lasers are found at pages 2 and 3 of the Proposed Decision. Both respondent and his wife operated the IPL/lasers in providing medical treatment for varicose and spider veins. Respondent’s wife used IPL/lasers to treat patient S.S. and that treatment caused burns and blisters on the legs of patient S.S., resulting in scarring.

The following legal conclusions of the administrative law judge are pertinent to the request to designate portions of the decision as a precedential decision:

1. Respondent’s wife engaged in the unlicensed practice of medicine. She was the sole owner and sole corporate officer of VCEC and provided laser treatment to patients, which was the unlicensed practice of medicine. Even if respondent’s wife qualified as a medical assistant, medical assistants may not legally perform IPL/laser treatments on patients.
2. Respondent aided and/or abetted the unlicensed practice of medicine by allowing respondent’s wife to use the IPL/laser to treat patients.

### **Portions of Decision to be Designated as Precedential**

The recommendation is that only the following portions of the decision be designated as precedential:

Factual Findings -- 1 and 2; the first sentence of Factual Finding 3; Factual Findings 4 and 5; and Factual Finding 6 except for the last two sentences.

Legal Conclusions -- 1 through 5.

For the sake of clarity, if the Division approves the request to designate the above portions of the decision as Precedential, I recommend that the Division use the same method as the courts use when granting partial publication of a decision. That is, those portions not accepted for publication are redacted and replaced with asterisks. To illustrate, I have attached as Exhibit 2 the decision in its entirety. Exhibit 3 is the redacted version of the decision. This is what those viewing the Division’s precedent decisions would see.

## Rationale

16 Cal. Code Regs. 1364.40(a) authorizes the division to designate, as a precedent decision, "any decision or part of any decision that contains a significant legal or policy determination of general application that is likely to recur."

Lasers are widely used as a means of treating many conditions—cosmetic and otherwise. This decision would clarify that unlicensed persons may not use IPL and/or lasers to treat medical conditions, that a medical assistant (who is an unlicensed person) may not legally perform IPL/laser treatments on patients, and that a general law corporation cannot legally practice medicine even if it hires a medical director. These are all issues which recur on a frequent basis. The portions of the decision proposed to be designated as precedent contain significant legal determinations and would provide guidance to physicians, their advisors, law enforcement agencies, and the general public as to who may own a medical practice and/or use IPL/lasers in treating medical conditions.

DOREATHEA JOHNSON  
Deputy Director, Legal Affairs



ANITA L. SCURI  
Supervising Sr. Counsel

Attachments

cc: Thomas Reilly, Deputy Attorney General