

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS
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In the Matter of the Complaint of

**DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES,**

Complainant,

-against-

DECISION

Complaint No.: 2025-17028

FEI MIN

Respondent.

-----X

The above-noted matter came on for a Webex hearing before the undersigned, Aiesha L. Hudson, on March 6, 2025.

The respondent, having been advised of her right to be represented by an attorney or non-attorney representative, chose to appear *pro se*.

The Division of Licensing Services (hereinafter, "DLS" or "complainant") was represented by Karen Tully, Esq., New York State Department of State ("Department").

Mandarin to English and English to Mandarin interpretation services were provided by Language Today.

COMPLAINT

The Statement of Charges appended to the Secretary of State's Order of Summary Action ("Order"), which was issued pursuant to State Administrative Procedure Act ("SAPA") § 401(3), alleges that the respondent's license as a cosmetologist should be revoked or other action be taken because the respondent committed violations of Article 27 of the General Business Law ("GBL") and the regulations promulgated thereunder: by unlawfully engaging in the practice of medicine outside the scope of their license by offering and/or providing injectable cosmetic services and laser cosmetic services to the public (in violation of Education ("Educ.") Law § 6512-1, and Sections 160.27(c), (d) and (f) of Title 19 of the New York Codes, Rules and Regulations ("NYCRR")); by unlawfully engaging in the practice of acupuncture by offering and/or providing microneedling services to the public (in violation of Educ. Law § 8212); and by operating an unlicensed appearance enhancement business (in violation of GBL §§ 400(8), 401(2) and 19 NYCRR § 160.3). The Department also charges that by engaging in the aforesaid conduct the

respondent has thereby demonstrated untrustworthiness and/or incompetency (in violation of GBL § 410(1)(c)).

FINDINGS OF FACT

1) The respondent Fei Min holds a license as a cosmetologist (UID# AEC-14-07999) which was due to expire as of July 23, 2027, until it was suspended on February 13, 2025 per the Secretary's Order (State's Ex. 2). The respondent held an appearance enhancement business license under the name Princess Beauty, Inc., located at 3636 Prince St., Ste 302, Flushing, NY 11354-4001, which was valid from March 30, 2017 through March 30, 2021 (State's Ex. 2).

2) On February 3, 2025, a criminal complaint was filed by the Queens County District Attorney's Office, alleging that between June 15, 2021 and September 13, 2024, the respondent committed the following offenses inside Princess Beauty, Inc. located at 36-20 Union Street, Queens, NY: Assault in the Second Degree (an armed felony offense - recklessly causing serious injury to another person by means of a deadly weapon or dangerous instrument), Penal Law ("PL") § 120.05(4), a class D felony; Assault in the Second Degree, PL § 120.20, a class D felony; Reckless Endangerment in the Second Degree, PL § 120.05(6), a class A misdemeanor; and Unauthorized Practice a Crime, Education Law § 6512-1, a class E felony. The charges were based on the complaint of Jun Chen, who alleged that between June 15, 2021 and September 13, 2024, Fei Min "injected unknown substances into her face, neck, and breasts" and told her that the injections were "Botox, stem cell, collagen treatments, and other injectable or microneedle treatments" (State's Ex. 4). Ms. Chen's complaint also alleges that: on July 4, 2024, the respondent used a needle to inject unknown substances into her neck 128-140 times, causing "redness, bleeding, swelling and substantial pain" and as a result of the injections suffered a "painful reaction on her neck"; that she returned to the respondent's business location on July 18, 2025, at which time the respondent injected Ms. Chen with an unknown substance to "try to remove or reduce swelling, pain and bumps around injection sites on her neck"; and during the relevant time period the respondent also "administered laser and microneedling treatments to [Ms. Chen's] neck to remove or reduce the swelling, pain and bumps around the injection sites on her neck" (State's Ex. 4). Ms. Chen's complaint indicated that the respondent advertised and performed these services at her business under the name "Princess Beauty, Inc" at 36-20 Union Street, Queens, NY (State's Ex. 4). The criminal charges were still pending at the time of the hearing (Tr. at 74).

3) Upon a referral from the New York State Education Department ("Education Department") (Tr. at 38), the Department commenced an investigation of the incidents. During the Department's investigation, DLS Chief Investigator Jenna Berschwinger ("Chief Inv. Berschwinger") obtained a copy of the criminal complaint filed against the respondent by the Queens County District Attorney's Office. Chief Inv. Berschwinger also searched the Department's licensing database and found that the respondent had an active cosmetology license, as well as an appearance enhancement business license that expired in 2021. She found no record of an appearance enhancement business license issued at the address where the respondent provided services to Ms. Chen (36-20 Union Street in Flushing) (Tr. at 40, 42).

4) On February 10, 2025, the New York Secretary of State issued an Order of Summary Action, suspending the respondent's cosmetology license pending proceedings for revocation based on the determination that the respondent had engaged in dangerous and unlawful conduct (State's Ex. 1).

5) On February 12, 2025, a Notice of Hearing along with a copy of the Secretary's Order and Statement of Charges ("Complaint") was mailed, via both certified and regular mail, to the respondent's address in the Department's records.¹

6) At the hearing, Jun Chen testified that she had been a customer of the respondent since June 2021, having received stem cell injections on her neck at least five or six times until September 13, 2024 when she stopped seeing her (Transcript ("Tr.") at 14-15). She also confirmed that the business location where she received services was named Princess Beauty (identified by a sign on the steps) and was located at 36-20 Union Street in Flushing (Tr. at 15). She stated that, during her appointments, she did not see any other employees but observed that the respondent shared the space with one other person which was a separate business. The respondent told Ms. Chen that she had been tested by an unnamed "female" doctor who worked at a hospital and who was supporting or sponsoring the respondent's business. However, Ms. Chen stated that respondent was the only person who performed the injections on Ms. Chen, and Ms. Chen never saw the doctor (Tr. at 16-17). Ms. Chen also stated she did not recall seeing any licenses displayed when she was receiving services (Tr. at 18).

7) Ms. Chen further testified that over a three-year period, the respondent provided her with multiple cosmetic injectable services, including injections of Botox, on her neckline, nose, cheek, eyebrow, and breast (Tr. at 17), and that she paid around \$50,000 for these services (Tr. at 21).

8) Ms. Chen testified that she was injured by the respondent while receiving injectables. She stated that on unspecified dates she received injectable services from the respondent that caused pain and blood at first, and that other injectables failed because they caused her face to be unbalanced and her smile to be permanently altered (Tr. at 18). She stated she never knew exactly what she was being injected with (Tr. at 20).

9) Ms. Chen testified that the worst trauma was to her neck. Specifically, she stated that, on July 4, 2024, she received injections on her face and hands for a moisturizing treatment, a service she had been receiving for over a year. She recalled that the respondent added allergy medicine to the liquid before injecting her face (Tr. at 19). She stated that after her hand and face treatment, the respondent asked her if she would like injections in her neck (because her neck looked dry). The respondent also told her she did not want to waste the remaining liquid which she would have to throw away. The respondent did not add more allergy medicine to the liquid before injecting Ms. Chen's face (Tr. at 19-20). Ms. Chen testified that she agreed to the neck

¹ The Notice of Hearing and Secretary's Order were also mailed to the respondent at her business address (Princess Beauty, Inc. 36-20 Union Street, Flushing, NY 11354) via regular and certified mail on February 12, 2025 (State's Ex. 1).

injections to be cooperative since her face injections were fine (Tr. at 20). As a result, Ms. Chen testified she received approximately 140 injections on her neck that day (July 4th). However, she had an allergic reaction to the neck injections. She described that after she received the neck injections, the injection sites blistered and became inflamed and “reddish,” and she experienced a lot of pain, itching, and trouble sleeping (Tr. at 21-22). She thought the allergic reaction was due to the fact that allergy medicine was not added to the liquid used on her neck for the injections (Tr. at 20). Ms. Chen stated she contacted the respondent a day or two after the respondent administered the injections to explain the symptoms of her allergic reaction to the neck injections, and the respondent told her to buy an anti-itching product at a drug store and apply it, which Ms. Chen did for several days without relief of her symptoms. She was still itching, in pain and had a slight fever. Thereafter, Ms. Chen communicated with the respondent every few days over a two-week period looking for help to abate the symptoms that had not subsided. After two weeks, Ms. Chen returned to the shop, demanding that the respondent do something to help her (Tr. at 23-24).

10) Ms. Chen testified that when she returned to the respondent’s business on July 18, 2024, the respondent injected anti-allergy medication into each of the blisters, which at the time stopped 80% of the itchiness and improved her ability to sleep (Tr. at 23-24). However, there still appeared to be liquid inside each injection, appearing as a “red bean” or bump on her skin (Tr. at 24). Ms. Chen stated she went back to the respondent four or five or six times to have her try to extract all the liquid that she initially injected. When she asked the respondent to repeat the allergy medication injections, the respondent told her that it could only be done once a month (Tr. at 25-26). To treat the allergic reaction, Ms. Chen stated that the respondent next tried microneedling to break each blister in hope that her body could absorb what was inside more quickly. She stated the process caused a lot of blood and a lot of pain, and did not work because the liquid had become a yellowish gel (Tr. at 26). She testified that, after microneedling, the respondent tried to treat the appearance of the blisters by injecting another liquid (to which she added saline solution) into her neck. The respondent told Ms. Chen someone told her that the saline injections would help because other clinics have used them in cases of allergic reactions. Ms. Chen stated that the treatment caused the bumps to shrink initially but then she had what appeared to be another allergic reaction (Tr. at 26). Thereafter, the respondent tried what she told Ms. Chen was laser-needling, which burned off the gel in the blisters, but Ms. Chen stated it was very painful (Tr. at 27-28). Although the laser-needling was the most effective, after two treatments with the respondent, Ms. Chen decided not to go back (Tr. at 29). She testified that the last time she visited the respondent was on or about September 13, 2024 (Tr. at 34).

11) Ms. Chen testified that, after she decided not to go back to the respondent for further services, she reported her experience with the respondent to the police and provided a photograph that she took of her neck on July 6, 2024, two days after she received injections by the respondent (State’s Ex. 3; Tr at 29, 31-32). The photograph shows numerous, distinct raised bumps visible on Ms. Chen’s lower neck and upper chest, with numerous other bumps shadowed under her chin and upper neck. The bumps appear in at least six horizontal rows, spaced apart (State’s Ex. 3). At the time of the hearing, there were still visible red marks on Ms. Chen’s neck that coincided with the bumps appearing in the July 6th photograph. Ms. Chen admitted on cross-examination that after the laser-needling treatment the majority (70%) of the red marks are flat and 30% are

still “a little bit” bumpy (Tr. at 33). However, the marks from the blisters and some scars are still there (Tr. at 34).

12) At the hearing, Chief Inv. Berschwinger testified that a cosmetologist is not permitted to administer injections of Botox, stem cell, collagen or other substances. She also stated that laser hair removal is the only laser treatment permissible with a cosmetology license, and all other laser treatments are not allowable. Microneedling is also not permitted with a cosmetology license (Tr. at 43). The injections need to be performed by a licensed physician, nurse practitioner, or registered nurse, and microneedling can only legally be administered by an acupuncturist (Tr. at 43). Chief Inv. Berschwinger performed a search of the database of the Education Department’s Office of the Professions, which issues medical professional licenses and acupuncture licenses, and did not find any license issue to Fei Min as a medical professional or acupuncturist (Tr. at 43-44). Chief Inv. Berschwinger further stated that the Queens County District Attorney’s Office has confirmed that Ms. Min does not have the proper licensure issued by the Education Department to perform the services that she did (Tr. at 45).

13) At the hearing, the respondent denied giving Ms. Chen any injections. She testified she used a machine that inserted needles to “infiltrate” Ms. Chen’s skin for rehydrating her skin (Tr. at 48). She stated she applied a product to Ms. Chen’s face and then applied the same serum she used to perform the facial treatment to Ms. Chen’s neck (Tr. at 49). She could not identify the serum other than to say it was a cosmetic product used to rehydrate and tighten skin that she purchased wholesale in Flushing (Tr. at 49). She told Ms. Chen that after the treatment she was not allowed to wash her hair or face for twenty-four hours. However, two to three days after the treatment, Ms. Chen told her that she had an allergic reaction on her neck and that it was so itchy she was really uncomfortable (Tr. at 50). The respondent reasoned there could be contributing factors to Ms. Chen’s allergic reaction and noted that she used the product on Ms. Chen’s face and neck, but Ms. Chen only had an allergic reaction on her neck (Tr. at 51). She stated that when Ms. Chen initially contacted her about her symptoms, she told Ms. Chen to go to the pharmacy and get over the counter anti-itch medication to stop the itching (Tr. at 51, 64). When Ms. Chen returned to her store more than ten days later, she tried to help using the “hydrophotometer” machine to put the anti-allergy medication “into her skin” which relieved the itching (Tr. at 51). She stated when Ms. Chen returned to her store again her hair was shaved, which Ms. Chen informed her was because she stayed in a location with bedbugs, which the respondent also conjectured could be related to Ms. Chen’s allergic reaction to the serum (Tr. at 51-52). The respondent claimed she used the “hydrophotometer” machine to apply the anti-allergy medication around Ms. Chen’s neck to “try to get that into her skin” but she claimed that the machine did not have needles (Tr. at 51). She described a one-time use probe that she used to infiltrate the skin and stated that the machine used electric conduction to pass through the skin. The respondent admitted that during one of their sessions, she used a laser to target the inflammation (Tr. at 52-53, 61).

14) Although the respondent initially admitted using needles to apply the serum she used on Ms. Chen, on cross-examination, the respondent insisted that she only used the “hydrophotometer” machine to apply the serum using a probe with electric conduction that targets the superficial layer of skin (Tr. at 59). She denied using any Botox, stem cell or collagen on Ms.

Chen. She stated that, although some cosmetic products may contain collagen or stem cells, she only uses those products for hand and face massages (Tr. at 63-64). During the hearing, the Department found an advertisement for a “15-in-1 Hydra Dermabrasion Skin Care” machine online which the respondent testified was similar to the “hydrophotometer” machine she used on Ms. Chen (Respondent’s Ex. A; Tr. at 70).² The respondent denied Ms. Chen’s allegations that she had provided Ms. Chen Botox injections in the past. She stated she had only been providing Ms. Chen facial treatments for skin hydration for three years (Tr. at 71). She conjectured that Ms. Chen claimed she was providing her with Botox injections because Ms. Chen had recently been scammed and the respondent was unable to lend her money or help her obtain a loan (Tr. at 72-73).

15) With respect to the charge that she engaged in microneedling, she initially stated that to treat Ms. Chen’s inflammation, she used the larger laser machine and a small machine with needles (Tr. at 54). She later denied using the smaller machine with microneedles to treat Ms. Chen’s skin. She insisted she only used the laser machine to treat Ms. Chen’s skin, specifically to reduce the inflammation on Ms. Chen’s neck (Tr. at 62, 65).

16) With respect to the charge that she was operating an unlicensed appearance enhancement business, the respondent testified that the name of the store where she worked was “Princess Beauty” but that she was not the owner of the store but rather an independent contractor who worked part-time. She was not paid a salary. The customer paid in cash and the store owner gave her a portion of the payment, which is reported on her Form 1099 for income tax purposes. She stated the person who owned the company was named Shelly, but she did not know the person’s last name. She did not know or check if the owner had a valid appearance enhancement business license. She did provide a copy of her cosmetology license to the owner. The owner closed the shop in October 2024 (Tr. at 54-55, 56-58). The respondent admitted she had a previous appearance enhancement business license under the name “Princess Beauty, Inc.” but stated she closed the business (Tr. at 55). She stated that she just so happened to work for someone who has a business with the same name. The respondent testified, “funny thing is in fashion, there are a lot of beauty shops [that] have the same name” (Tr. at 57).

17) The respondent testified she has been licensed to provide facials for more than ten years but was not familiar with any laws prohibiting cosmetologists from using lasers on skin, other than for hair removal. She stated that when she obtained her cosmetology license, they trained her to use the machines she used to treat Ms. Chen (Tr. at 62-63).

OPINION AND CONCLUSIONS OF LAW

I- As the party who initiated this action, the complainant has the burden to prove, by substantial evidence, the truth of the charges. SAPA § 306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Division of Licensing Services v. Gutierrez*, 1101 DOS 08 (2008) (citing *Gray v. Adduci*, 73 N.Y.2d 741 (1988)). In

² The screenshot of the machine advertised on the eBay website, marked for identification as Respondent’s Ex. A at hearing, is moved into evidence post-hearing.

determining whether substantial evidence has been presented by the complainant, “the question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically.” *Division of Licensing Services v. Cirrincione*, 246 DOS 98 (1998) (citing *City of Utica Water Supply v. New York State Health Department*, 96 A.D.2d 719, 719 (4th Dep’t 1983)).

II- Pursuant to Article 27 of the General Business Law (“GBL”), “no appearance enhancement licensee shall be authorized to diagnose or treat diseases, including diseases of the skin, hair and nails. Such activity is within the practice of medicine.” 19 NYCRR § 160.27(c). Section 160.27(d) prohibits an appearance enhancement licensee from practicing nursing.³ However, pursuant to 19 NYCRR § 160.27(f), appearance enhancement licensure is not required if the “performance of services is under the direct supervision of a physician or nurse when performed within the direct employ of and on the premises of a medical facility.” § 160.27(f).

The Department contends that the respondent violated the provisions of Article 27 of the GBL and the regulations adopted thereunder, because “injections of [B]otox, stem cell and collagen, and other injectable cosmetic services are considered to be the practice of medicine and may not be performed unless under the supervision of a licensed physician or nurse practitioner” (Complaint ¶ 3), and that the respondent engaged in the practice of medicine by performing services requiring a medical or acupuncturist license, specifically “the injection of unknown substances in the neck, face and breasts of [Ms. Chen], causing, among other symptoms, bleeding, blisters, redness and swelling” (Complaint ¶ 1).

While the respondent denied injecting Ms. Chen with any substances, Ms. Chen provided credible testimony to the contrary, that was consistent with her earlier report to law enforcement. First, Ms. Chen testified credibly that over a three-year period the respondent had provided numerous cosmetic injectable services on her neckline, nose, cheek, eyebrow, and breast for which she had paid around \$50,000. She testified that she believed she was getting Botox and stem cell injections, although she never knew exactly what she was being injected with. She testified that she was injured by the respondent multiple times while receiving the cosmetic injectables, resulting in pain and blood. Moreover, with specificity, Ms. Chen testified credibly that on July 4, 2024, the respondent injected her more than 100 times in the neck with an unknown substance after giving her a facial treatment (which also involved injections). That Ms. Chen received the injections was supported by a photograph Ms. Chen provided of her neck taken a few days after the procedure, which shows numerous raised bumps on Ms. Chen’s neck and upper chest. Notably, the bumps appear in six or more neat rows, spaced apart, supporting they are the result of deliberately placed injections (rather than merely the result of her allergic reaction as conjectured by the respondent) (State’s Ex. 3). Second, Ms. Chen also credibly testified that after receiving the injections she suffered an allergic reaction in which the injection sites became inflamed red bumps with intense itching, and as a result she returned to the respondent on four to six separate occasions between July 18 and September 13, 2024 for the respondent to treat the symptoms. During that time, on at least two occasions, the respondent gave Ms. Chen additional injections (*i.e.*, allergy medication and an unknown substance with saline solution) to treat the itching and

³ The practice of nursing is defined in Educ. Law § 6902, depending upon on the type of nurse involved (*e.g.* registered professional nurse, licensed practical nurse, or nurse practitioner).

inflammation associated with the allergic reaction. In fact, the respondent specifically admitted that when Ms. Chen returned to see her after her neck treatment because of the itching and inflammation that followed it, the respondent administered allergy medication, and on subsequent occasions, performed microneedling and laser therapy as treatment.⁴

Although Ms. Chen was not able to specifically identify what substance was used in the injections given to her by the respondent, Chief Inv. Berschwinger testified that a cosmetologist is not permitted to administer injections of Botox, stem cell, collagen or other substances, but rather injections must be performed by a licensed medical professional (*i.e.*, physician, nurse practitioner, or registered nurse). Further, an acupuncture license is required to perform microneedling (Tr. at 43). The respondent has not contended, nor did the Department find any evidence, that she has a license as either a physician, nurse practitioner, registered nurse, or that she is or was otherwise licensed to perform medical services. Nor is there evidence that a medical professional was present to supervise. Further, there is no evidence that she had or has an acupuncture license. Thus, the respondent was not permitted to provide the injectable services she provided to Ms. Chen, nor the microneedling services.⁵

⁴ The respondent early in her testimony clearly admitted to using microneedling to treat Ms. Chen's allergy symptoms, specifically using a machine to puncture Ms. Chen's skin (Tr. at 55), although she later attempted to deny puncturing the skin with a machine (Tr. at 62). However, Ms. Chen testified with specificity how the respondent used the microneedling to treat the red blisters that formed after the respondent performed the initial procedure on her neck. Specifically, at the hearing, Ms. Chen testified:

So then she tried to use a different way, like, microneedling. She tried to break those -- each blister to be small, to hope to the body can absorb the dose, small amount of blister more quickly, but I don't think it works, but it -- it caused my -- every time she did all this caused a lot of blood and crazy pain, because it break my skin [on my] neck and it tried to break those -- the liquid -- actually, those liquid had become gel, yellowish gel later (Tr. at 26).

I found Ms. Chen's detailed testimony about this, and the other injections received from the respondent to treat her symptoms more credible than the respondent's denials. That the respondent would deny any and all of the allegations is understandable given that, at the time of the hearing, the criminal charges filed against her regarding the same conduct were still pending (Tr. at 74).

⁵ In the later part of the Complaint, the Department also charges that respondent violated 19 NYCRR §160.27(f) by providing laser cosmetic services (Complaint, ¶ 8). At the hearing, Chief Inv. Berschwinger testified that only laser hair removal was permissible with a cosmetology license and that all other cosmetic laser treatments were not allowable. Her testimony was presumably based upon the Department's scope of practice determination, which identifies the procedures or services that may be performed by the Department's appearance enhancement licensees and is posted on the Department's website (https://dos.ny.gov/system/files/documents/2025/03/ae-licensees-procedural-service-determinations_03.2025.pdf). However, that the provision of laser therapy services, other than hair removal, constitutes the practice of medicine is not clearly identified in Article 27 of the GBL (or the regulations promulgated thereunder). Accordingly, on appeal, in *Division of Licensing Services v. Kaufman*, 36 DOS APP 12, the Secretary reversed the ALJ's determination that the respondent's offer or provision of services using a laser or laser-like machine for conditions not related to hair removal

Despite the respondent's denial that she provided Ms. Chen with any injections, including on July 4th, there is clear evidence that she engaged in the unlicensed practice of medicine at the very least when she treated the allergic reaction that ensued after that July 4, 2024 service. The practice of medicine is defined as "diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition" Educ. Law § 6521. By her own admission, the respondent, attempted to treat Ms. Chen's allergic reaction ***admittedly not knowing the cause*** through a variety of means, including applying allergy medication, and using a machine to perform microneedling and laser therapy. Although she later denied using a needle in her treatment of Ms. Chen, the respondent testified that she used a "hydrophotometer" machine to apply the anti-itching medication and other products so that it would be "infiltrated" into Ms. Chen's skin to relieve the inflammation and itching. Thus, whether she used the machine with a needle or electronic pulse to effectuate the product's absorption into the skin, she was clearly attempting to treat Ms. Chen's medical condition.

Moreover, the respondent's conduct was not permissible pursuant to 19 NYCRR §160.27(f) given there has been no proof, nor any contention, that "Princess Beauty" is a medical facility, or her services were undertaken with the supervision of a medical professional. Although Ms. Chen testified that the respondent mentioned being trained by a physician, the respondent has not contended, nor is there any evidence, that the unidentified doctor provided any supervision of the respondent's provision of services.

constituted the unlicensed practice of medicine. The decision reasoned that the ALJ's conclusion could not be sustained because "there was no evidence in the record clearly demonstrating that the use of laser or laser-like procedures for the non-invasive cosmetic treatment of spider veins, wrinkles, age spots and the like constitute[d] the practice of medicine." *Id.* at 8. The decision pointed out that, at that time, there was no definitive guidance from the Education Department as to the scope of "the practice of medicine" as it relates this issue, and the Department of State was "not positioned to independently determine whether specific acts constitute the practice of medicine" *Id.* at 4, 6.

The Education Department has now provided that guidance, by adopting the conclusions of the NYS Board of Medicine made in March 2025 that "the use of any energy devices, including lasers, which affect the basement membrane or deeper tissues (*e.g.*, dermis, fat) to treat any "physical condition" constitutes the practice of medicine." NYS Board of Medicine, "Use of Energy Devices including Lasers as the Practice of Medicine" (March 7, 2025), available at: <https://www.op.nysed.gov/sites/op/files/2025-02/Use%20of%20Energy%20Devices%20Including%20Lasers%20as%20the%20Practice%20of%20Medicine.pdf>. This guidance, which also includes a table identifying whether a licensed medical professional is required to perform the service or must be present to supervise, based on the layer of skin being targeted/affected, was issued well after the respondent used a laser to treat Ms. Chen's inflammation between July and September 2024. It is also not clear from the record the strength of the laser the respondent used on Ms. Chen, which would affect the level of skin affected (epidermis or dermis). However, what is clear from the record is that the respondent's actions (injection of allergy medication and other substances, microneedling, and laser treatments) were intentionally done to treat Ms. Chen's medical condition, what she diagnosed as an allergic reaction to either the product used in the initial neck treatment on July 4th or an unknown cause thereafter. This was the very definition of the practice of medicine.

Accordingly, there is substantial evidence that the respondent engaged in the unlicensed practice of medicine and acupuncture, outside the scope of her cosmetology license, and without supervision by a medical professional, which is a violation of 19 NYCRR § 160.27(c), (d) and (f); Educ. Law § 6512(1) (providing that the unlicensed practice of a profession such as medicine is a class E felony); Educ. Law § 8212 (prohibiting the unlicensed practice of acupuncture).

III- Pursuant to Article 27 of the GBL, “no person shall own, control or operate, whether as a sole proprietor, partner, shareholder, officer, independent contractor or other person, an appearance enhancement business without having received a license for such business.” GBL § 401(2); 19 NYCRR § 160.3. In this case, the Department contends that when providing Ms. Chen services at 36-20 Union Street in Flushing, NY she was operating an unlicensed business, under the name Princess Beauty, the same name of her previously licensed business in Flushing, NY (Princess Beauty Inc.) whose license expired in 2021.

Based on the evidence in the record, there is substantial evidence to support this charge. The record shows that the respondent provided appearance enhancement services to Ms. Chen at the Princess Beauty location on Union Street for three years for remuneration. Even though she denied providing injectable services, the respondent admitted providing facial treatments to Ms. Chen and did not dispute Ms. Chen’s testimony that she did so for a fee. There is also no evidence in Department records that the respondent has an appearance enhancement business license to operate Princess Beauty at the location on Union Street. In fact, the Department found no appearance enhancement business license issued to anyone to operate at that address. However, the respondent argues that she was not the business owner, as the Department contends. The respondent argues that she was merely an independent contractor who earned only part of what each customer paid. The Department is dubious, however, given that the name of the business at the location on Union Street (where Ms. Chen received services) was the same name as the respondent’s formerly licensed business (located on Prince Street); during her appointments Ms. Chen never saw any other employees at the Union Street location; and the respondent could provide only the first name of her alleged employer. The Tribunal is also not convinced.

Despite being on notice of the Department’s charge in the Complaint that she was operating an unlicensed business at the time she provided services to Ms. Chen, at hearing, the respondent did not provide any evidence to corroborate her claim that she was an independent contractor, such as a copy of her Form 1099 she says she receives. She provided no evidence of a different owner. The Tribunal is not convinced she is not the store’s owner solely by her testimony, particularly given she stated she only knows the first name of the actual owner of the business. The Tribunal is also not convinced by the respondent’s argument that “a lot of beauty shops have the same name” (Tr. at 57). Due to the respondent’s far less than credible testimony denying she performed any injectable services on Ms. Chen, this Tribunal is not inclined to dismiss this charge she was operating an unlicensed business based on her testimony alone without any corroboration. Accordingly, the Tribunal finds there is sufficient evidence in the record to conclude that the respondent was operating an unlicensed appearance enhancement business in violation of GBL § 401(2) and 19 NYCRR § 160.3.

IV- Pursuant to Article 27 of the GBL, any appearance enhancement license may be suspended or revoked, or the licensee may be fined up to \$500, for the commission of acts demonstrating untrustworthiness or incompetence. GBL § 410(1)(c). A determination of incompetence or untrustworthiness is considered a separate charge and should be made upon an evaluation of whether, considering the totality of the circumstances, a party has demonstrated (1) a disregard for the standards of behavior imposed by the applicable laws, rules and regulations, such as a violation made in bad faith, (2) fraud or dishonesty, or (3) an inability or unwillingness to abide by or carry out the requirements of the regulatory scheme. *Division of Licensing Services v. Diallo*, 21 DOS APP 09 (2009). *Diallo* further makes it clear that a determination that a party violated a provision of the applicable laws, rules, or regulations may not, standing alone, constitute adequate proof of incompetence or untrustworthiness. *Id.*

In this case, the respondent demonstrated incompetence by engaging in repeated acts of the practice of medicine (in violation of 19 NYCRR § 160.27(c), (d), and (f) and Educ. Law § 6512(1)) without appropriate licensure, in addition to practicing acupuncture without a license (in violation of Educ. Law § 8212). The respondent admitted that she has been licensed to provide facials for more than ten years. Thus, as a cosmetology licensee, she should have been familiar with the laws that prohibit her from performing injectable cosmetic services and treating Ms. Chen's allergic reaction to her cosmetic services with injections and microneedles without the appropriate medical and acupuncture licenses. Her initial injections caused Ms. Chen significant injury and by continuing to treat her, rather than have Ms. Chen seek treatment from a medical professional, the respondent risked (and likely caused) further injury. While it may have been Ms. Chen who sought out the respondent to provide relief from the allergic reaction that followed the initial procedure, the respondent should have known that the treatment of Ms. Chen's symptoms, particularly with medication and even more injections, was not within her scope of practice to give. By engaging in those repeated acts of the unlicensed practice of medicine as well as acupuncture, the respondent demonstrated incompetence in violation GBL § 410(c).

V- With respect to the assessment of penalty, the penalty imposed on a respondent must be sufficient to deter future violations. *Division of Licensing Services v. Chomezyk*, 12 DOS APP 12 (2012); *see also Division of Licensing Services v. Misk*, 64 DOS 92 (1992); *Division of Licensing Services v. Williams*, 96 DOS 92 (1992). In order to discourage licensees from simply ignoring statutory mandates designed to protect the public, "it is necessary that more than just a minimal penalty be imposed." *Perfetto v. Division of Licensing Services*, 19 DOS APP 12 (2012). However, it is also well established that an administrative tribunal may not impose a penalty that "is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." *Pell v Bd. of Educ.*, 34 N.Y.2d 222, 233 (1974).

In the instant case, on multiple occasions, the respondent provided medical services at her appearance enhancement business location without a medical license, placing the health and safety of the general public at serious risk of harm, and in fact causing Ms. Chen significant harm. That the respondent was operating her appearance enhancement business without an appearance enhancement business license with the safeguards, prohibitions, and obligations that go along with such a license, further placed the safety of Ms. Chen and the general public at risk. While the respondent denied any wrongdoing, she had good reason to deny engaging in the acts alleged in

the Complaint given that she stated criminal charges were still pending at the time of the hearing. However, based on the substantial evidence of her misconduct, the respondent has shown she does not currently have the competence to be licensed as a cosmetologist.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT Respondent Fei Min has violated Title 19 of the New York Codes, Rules and Regulations (“NYCRR”) §§ 160.3 and 160.27 and General Business Law (“GBL”) §§ 401 and 410(1)(c). Pursuant to GBL § 410(1), the respondent’s cosmetology license, UID# AEC-14-07999, is revoked effectively immediately. Respondent Min is directed to send her license certificate to Elizabeth Murphy, New York State Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, 15th Floor, Albany, NY 12231-0001.

/S/

Aiesha L. Hudson
Administrative Law Judge

Dated: June 18, 2025