
Joint ASPS & ASAPS Guiding Principles: Supervision of Non-Physician Personnel in Medical Spas and Physician Offices

According to the International Medical Spa Association, there were approximately 2,000 medical spas operating in the United States in 2008, representing a 400% increase since 2004. Medical spas took in an estimated gross revenues of \$3.5 billion in 2008. The procedures and services offered at medical spas include massages, skin treatments such as microdermabrasion, chemical peels, fillers/injectables, facials, laser procedures for wrinkles, tattoo removal, scar/cellulite minimization, radio frequency treatments, and hair removal. Some of these establishments also offer cosmetic surgery procedures such as face lifts.

Medical spas are often led by physician directors, many with plastic surgery and dermatology backgrounds. However, the rapid growth in the medical spa market suggests that physicians from other specialties and non-physician directors are entering the business. Medical spa staff members also come from varied backgrounds including advance practice nurses, physician assistants, registered nurses, medical assistants, aestheticians, and cosmetologists.

ASPS and ASAPS recognize that plastic surgeons may have a distinct role in the growth and development of the medical spa industry. Nonetheless, there are many medico-legal aspects that should be carefully considered before plastic surgeons pursue such a course.

1. Background

- **Definition of a Medical Spa**

Many “clients/patients” have difficulty drawing a line of demarcation between medical spas and other spas, especially since both facilities offer similar services. The International Medical Spa Association provides the following definition of a medical spa:

“a facility that operates under the full-time, on-site supervision of a licensed health care professional. The facility operates within the scope of practices of its staff, and offers traditional, complementary, and alternative health practices and treatments in a spa-like setting. Practitioners working within a medical spa will be governed by their appropriate licensing board, if licensure is required.”

ASPS and ASAPS are aware of only one state, Florida, with statutory language in place that specifically defines the term “medical spa.” However, it should be noted that at least three state medical boards (Iowa, Massachusetts and Oklahoma) have introduced and begun using the term “medical spa” or “medi-spa” in their regulatory lexicons since 2006, illustrating that there is an increased interest in state oversight of such facilities.

- **Medical Spa Facility Licensure**

ASPS and ASAPS are unaware of any state that specifically license medical spas. However, based on the type of services offered, all relevant facility licensing requirements in a given state must be observed. For example, if salon services are offered in the medical spa, it is likely that it would have to meet any facility or licensing requirements of a state cosmetology board.

- **Delegation and/or Supervision**

The regulatory language governing physician delegation of health care services to non-physicians varies greatly from state to state. While the specific language varies, the common theme to state regulatory language is that physicians

may only delegate tasks or procedures to those individuals that are competent/qualified, by training, experience, or licensure. In addition, the tasks or procedures must be within the delegating physician's area of expertise.

State regulatory language defining supervision of non-physicians also varies greatly from state to state and is dependant on the specific licensure of the profession being supervised. In some states, the supervising physician must be continuously available in person or by electronic communications and other states require the presence of the physician in the same location (e.g. on-site and immediately available).

The Role of the Medical Director

States are silent on the term "medical director." However, it is logical to infer that only physicians licensed to practice medicine in a given state could be eligible to serve as the medical director of a facility in that state. States typically do not regulate the amount of time that a medical director must be present in a facility. It is not uncommon for a medical director to have a busy practice separate from the actual medical spa and his/her name and contact information should be made available to each patient.

Risk Management/Liability Issues

Taking on the role of medical director and/or owner exposes a physician to a host of liability issues both in the medical and business sectors. Plastic surgeons that are interested in opening a medical spa or becoming a medical director of a medical spa should consult with his/her liability carrier and attorney to determine state laws/regulations.

- **Corporate Practice of Medicine**

State corporate practice of medicine legislation has the potential to affect plastic surgeons' business arrangements with non-physician personnel. For instance, there are sometimes cases in which a physician provides clinical supervision of non-physician personnel in a setting in which the business is owned by the non-physician provider. A physician who provides supervision of an extender who also happens to be his employer can potentially present a conflict of interest, where business practices and clinical decision-making priorities may be in tension. States that have adopted strict corporate practice of medicine prohibitions expressly aim to curtail the exploitation of the practice of medicine to serve business interests. In many states, an arrangement in which the physician would be employed by a non-physician extender would be severely restricted or outright prohibited, so it is vitally important to research any state's corporate practice of medicine laws.

Corporate practice of medicine laws may also have the potential to affect plastic surgeons' options regarding the manner in which they delegate procedures to their staff. States are increasingly considering the proximity of physician supervision to be the potential litmus test for determining whether medi-spas are in fact operating in violation of corporate practice of medicine law. In an effort to curtail so-called "rent-a-license" arrangements in disreputable medi-spas, some states have introduced legislation that would require physicians who delegate the performance of minimally invasive procedures to be physically on-site and immediately available at all times such procedures are being performed.

2. Guiding Principles

1. Only properly trained and licensed physicians should engage in the practice of medicine, therefore, delegation of any medical procedure in a medical spa or physician's office must be carried out within the delegating physician's area of expertise and within the statutory/regulatory scope of the non-physician practitioner's profession.
2. Prior to delegating any medical procedure to a non-physician practitioner, an evaluation to establish the appropriate diagnosis and treatment plan in each new patient should be authorized by the supervising physician unless otherwise defined by the statutory/regulatory scope of the practitioner's profession (e.g. advanced practice nurses or physician assistants).
3. Physicians are responsible for ensuring that non-physician practitioners receive proper training, including certification for the specific equipment they may utilize to perform treatments. The physician is responsible for documenting the training completed as well as providing appropriate written protocols for the non-physician practitioner's use.

4. Each physician must ensure that a means for providing the appropriate informed consent for each patient has been established prior to treatment.
5. The surgeon at all times must maintain direct responsibility for all treatments delegated to an allied health practitioner. The surgeon shall determine his or her availability during treatments to allied health practitioners based on the experience and level of training for that particular practitioner and relevant to the appropriate state statutes.
6. It is the individual physician's responsibility to understand and abide by all applicable local and state regulations and relevant facility licensing.
7. When interpreting and applying these guiding principles to their individual practice, physicians should use their personal and professional judgment. The guiding principles should not be considered as a rule and are not meant to serve as the standard of medical care.

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