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PROVIDING LEGAL AND REGULATORY ADVICE TO ILLINOIS MED SPAS

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Physician Liability in Med Spas

By Renee Elise Coover, JD

The number of med spas in this country is at a record high. Dermatologists, plastic and cosmetic surgeons, and even general family practice physicians are opening med spas or adding med spa services to existing practices as the demand for non-invasive cosmetic procedures rapidly grows. Physicians are lured by the lucrative income and flexible nature of med spa ownership but as the popularity of this business model increases, so does the risk for liability.

Though med spas offer non-invasive and fairly simple medical treatments like Botox and laser hair removal, these procedures carry the same risk of litigation as any other medical procedure. Due to the aesthetic nature of the treatments and spa-like setting where most treatments are performed, there is a public perception that med spa procedures are risk-free.

But this misconception has contributed, in part, to the recent rise in litigation, putting med spas in the spotlight for all the wrong reasons. Physicians now must be especially cautious when signing on as a “medical director” of a med spa, offering med spa-like treatments or opening a med spa of their own. As the saying goes, ignorance is not an excuse; but for many physicians, ignorance of the law can also cost them their license.

There are several common patient allegations that put physicians at risk of losing their medical license. Lawsuits are often filed by patients due to allegations of lack of supervision of medical treatments, inadequately trained med spa personnel, less than optimal results, and lack of informed patient consent.

Perhaps the most problematic issue that most patients are not even aware of is improper ownership of the med spa. In many states med spas must be physician-owned in accordance with that state’s medical practice rules. But many physicians either do not know the laws or they are trying to get around them. If a physician signs on as a “medical director” of a medical spa but has no ownership and no supervision of the medical procedures, the med spa will be charged with the unauthorized practice of medicine in several states and the physician could lose his or her license. In Illinois, the Department of Professional Regulation has put med spas on their radar and in the past few years, hundreds of physicians have been fined, suspended or lost their licenses due to allegations of improper ownership or lack of supervision in the med spa setting.

Physicians must be very cautious when opening a med spa or offering med spa services as part of an existing practice. To reduce the risk of liability, physicians should educate themselves and their staff regarding written protocols, relevant laws and regulations for their particular state, legal and regulatory issues associated with med spas, adequate supervision and proper delegation of medical procedures, and risk management.

If you have questions regarding the proper exit strategy for physicians in med spas, it is important to consult with an attorney who can advise you on the myriad issues and craft an exit strategy.

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