

# THIERSCH & ASSOCIATES

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*Bad for Med Spa Business?*

## Groupon

By Renee Elise Coover

I recently stumbled across a Groupon deal for “\$145 for three laser vein-therapy treatments for the face or legs (up to \$720 value).” This may sound like an attractive deal, but are med spa Groupon promotions legal? And if so, is it helping or hurting the med spa industry?

If you are a med spa owner, you are probably well aware of Groupon, the daily deals website that, a mere six months ago, was deemed the “fastest growing company in web history” according to *Forbes Magazine*. According to a Groupon sales rep, medical spas and salons are the #1 target for Groupon, mainly because hair removal has become the best-selling service Groupon offers. Other Groupon offers for med spa treatments include chemical peels, skin tightening, body contouring, and even Botox.

On the surface, Groupon appears to be a lucrative advertising method for med spas to market their services to a wide sector of the population and turn a new Groupon client into a returning client at full price. The company’s business model is simple: Groupon sells discount vouchers to local med spas (and other local businesses) at a major markdown- sometimes up to 90% off retail price- but then requires the med spa to pay up to 50% of the revenue back to Groupon.

But while these advertising methods are seductive, recent concerns regarding the viability of Groupon as a business and the legality of the med spa industry participating in Groupon deals may sour its appeal.

According to a report by the *Huffington Post* this past week, “Groupon is currently suffering from a crumbling stock price amid dismal earnings and reports that its earliest backers are dumping their shares.”<sup>1</sup> Small businesses are uniting and jumping on the anti-Groupon band wagon as more business owners suffer the unexpected and unpleasant effects of Groupon offerings. Disgruntled clients, negative Yelp.com reviews, and loss of profits are just a few of the forces driving small businesses away from Groupon and other daily deal sites.

But even if Groupon proves to be successful for some small business types – it may not be legal for med spas to participate. In some states like Illinois, there are laws strictly prohibiting a licensed physician from directly or indirectly dividing, sharing or splitting any professional fee or other form of compensation for professional medical services with anyone in exchange for a referral.

Since Groupon keeps as much as 50% of the client’s service fee, this could be perceived as the med spa splitting its fees with Groupon or paying it “kickbacks” for patient referrals, which is illegal under some state as well as federal laws.

<sup>1</sup> [http://www.huffingtonpost.com/2012/08/22/modern-wellness-spa-groupon\\_n\\_1819711.html](http://www.huffingtonpost.com/2012/08/22/modern-wellness-spa-groupon_n_1819711.html)

Although most states prohibit fee-splitting between physicians and non-physicians, there is much confusion among the med spa industry as to whether or not participating in Groupon deals really is fee-splitting. Med spas are allowed to pay for marketing and advertising, and some in the industry consider the payment Groupon receives like an advertising or marketing fee.

The problem with that reasoning, according to Alex R. Thiersch, President of the American Med Spa Association, is that Groupon, unlike a traditional advertising company, does not receive a flat fee for its services, but rather a percentage of the total revenue generated by the ad. “Groupon is receiving a percentage of the total payments made by patients to the med spa,” Thiersch explained. “While the intent behind the service may be to advertise and increase business for the med spa, the fact remains that the payments are coming directly from the patients. That’s the real issue.”

Med spas using Groupon should be on notice because state enforcement agencies are looking into this issue and some state authorities may soon decide that it is illegal for med spas to participate in Groupon or other daily deals.

Groupon has remained silent on this issue, and has repeatedly declined to comment when asked about the legality of its business relationships with med spas. And of course, now that Forbes Magazine is asking the pointed question “*Is Groupon Over?*” and the Wall Street Journal reports that “*Groupon Investors Give Up,*” – remaining silent may be Groupon’s best decision.