

# What Physicians Need to Know about Med Spas

Consider the legal issues before getting involved in these popular services

By Ericka Adler, JD

**M**ANY PHYSICIANS have become interested in opening med spas, adding med spa services to their existing medical practices or even serving as a medical director of a med spa.

If any of these ideas are appealing to you (or your practice), there are various legal issues to consider before getting involved.

## Corporate Practice of Medicine

In Illinois and most other states, general business corporations and limited liability companies are not allowed to employ or engage physicians or practice medicine. This is typically referred to as the “corporate practice of medicine doctrine” (CPOM).<sup>1</sup> With limited exception, CPOM requires that physicians practice through professional entities, such as professional corporations, medical corporations, or professional limited liability companies. In Illinois, a professional entity can only be owned by licensed Illinois physicians or certain other Illinois licensed healthcare professionals.

Services offered to patients in med spas are generally considered medical services, although an array of cosmetic and esthetician services are often offered as well. Because a business entity cannot own or operate a medical practice, it can prove a challenge for unlicensed persons to operate or own a med spa. As a means of allowing unlicensed persons to participate in the operation of a med spa, a structure is typically created where a management services organization (MSO) is formed. An MSO is a business entity that can be owned by both licensed and unlicensed people. The MSO can contract to provide the professional practice everything “non-clinical” that it may need to operate. This can include space, equipment, non-professional personnel, management and administrative services and other items and services. The MSO is then paid a substantial management fee to cover the cost of

the items and services rendered, as well as to allow for a financial profit. This type of arrangement is commonly referred to as a “physician management model” (PMM).

## Friendly Physicians

Under a PMM, a professional entity is still needed to actually render those med spa services considered medical services. The physician owner of the professional entity may be an active participant in the med spa business, but many serve only as a “friendly physician.” Under a friendly-physician arrangements, the owner physician is paid some amount for their cooperation in owning the entity, and will otherwise be prohibited from transferring ownership in the professional entity or terminating the management arrangement with the MSO. The friendly physician may or may not be involved in the business or render any supervision services to other clinical and non-clinical staff. It is important in setting up a PMM to be aware of legal restrictions that limit the control that a non-clinical entity can impose on a clinical entity. Physicians who serve as friendly physicians need to be careful about simply owning the professional entity and should talk to counsel to assure they are protected both legally and financially.

## Fee-Splitting

An additional issue to be considered in PMM arrangements is how compensation is shared among the parties. The management fee between the professional entity and the MSO cannot, with limited exception, allow for the sharing of professional fees between the entities. Illinois law prohibits a professional entity from dividing profits based on a percentage with a non-professional entity. This also means that non-clinical personnel working for or managing a medical practice/med spa also cannot be paid a percentage of professional

## What Is a Medical Spa?

**MEDICAL SPAS**, which are also referred to as medi-spas or medspas, typically combine some medical procedures normally performed in a physician’s office with an experience akin to a day spa.

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With a particular focus on cosmetics and anti-aging treatments, medical spas

are known to offer non-surgical anti-aging treatments that were once performed only at a doctor’s practice. In some states or jurisdictions, however, there is a requirement that medical spas be owned and operated by a qualified physician.

entity revenue. The parties involved in the arrangement should work with counsel and an accountant to create an appropriate and legal management fee.

## Patient Services

Once a med spa practice is established, either through a PMM or within a physician's existing practice, it is essential to understand that Illinois law dictates who can provide certain med spa services and the type of physician involvement required. The Illinois Department of Financial and Professional Regulation, Division of Professional Regulation ("IDFPR") restricts certain procedures performed by particular types of licensed people. For example, cosmetologists and estheticians are prohibited from using any technique, product or practice intended to affect the living layers of the skin. This would include the following procedures, which fall outside their licensure and actually constitute the practice of medicine: Botox, chemical peels, collagen injections, colonics (if there is any representation of health benefits), liposuction, microdermabrasion (except superficial or light microdermabrasion intended to only remove dead skin, cells, oil and other debris from the surface of the skin), dermaplaning, microblading, microneedling and radiofrequency.

If the above procedures are delegated by a licensed physician, a non-physician can perform them but only if they are not holding themselves out as a cosmetologist or esthetician while performing the delegated procedure. This issue can arise when employees wear name tags identifying their licensure or are identified in a particular way on a practice's website or other promotional materials.

It is also important to note that these common med spa type procedures can only be provided to people who are patients of the physician and have established a physician patient relationship. This means a physician must examine the patient and determine the appropriateness and the course of treatment, and the person to whom the physician delegates performance must carry out the course of treatment as instructed. A medical record and appropriate patient documentation should be completed and maintained.

Another restriction of significance that affects med spas relates to use of lasers. Illinois rules related to the Medical Practice Act provide that procedures involving a laser classified by the FDA as a medical device must be performed by a licensed physician. The physician must examine the patient and determine an appropriate course of treatment before any laser procedures are performed. The physician may delegate the performance of laser procedures (in certain circumstances) to a person who is functioning as an assistant to the licensed physician.

Physicians should always remember to make


sure their malpractice carrier is aware of the services they are offering within a practice and that the appropriate supervision/collaboration documents are created in compliance with state law. It is essential that physicians do not delegate or supervise services of which they themselves have no training or expertise as this can create risk for a practice and additional liability concerns.

## Serving as Medical Director

Physicians are sometimes asked to serve as a "medical director" to a new or existing med spa arrangement. Hiring a medical director is often seen as "curing" an improperly formed med spa arrangement, but this is not an effective cure. Physicians who take on the title of a "medical director" and are paid in such capacity, but do not actively play the role of medical director, may find themselves with unanticipated liability issues for allowing their name and license to be used in such a manner.

Properly formed PMMs and medical practices also sometimes hire a physician to serve as medical director, which is completely acceptable. Such medical directors should still be aware of all requirements related to operation of the med spa as well as the supervision and delegation issues addressed above.

Creating med spa arrangements or introducing med spa services to a practice can be very lucrative. However, it takes proper planning and guidance to manage such businesses in a legally compliant manner. Entering into any arrangement without proper research and preparation can have unintended legal and financial consequences for everyone involved.

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**Chicago health attorney Ericka Adler says physicians considering development of a medical spa need to plan and consider myriad legal issues to ensure their business arrangements are solid and in compliance with state laws and regulations for what could be a potentially lucrative endeavor.**