

Ethics and the Practice of Aesthetic Medicine

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Everywhere you turn, it seems there is an opportunity to have a non-invasive aesthetic procedure done. Besides a visit to the newest medical spa in your local shopping center, you may be able to get a shot of BOTOX™ while you have your hair done, or perhaps a chemical peel while you visit your primary care physician for your yearly check-up. Don't forget that lipodissolve procedure from your OB/GYN.

According to the American Society of Plastic Surgeons, there were over 9.1 million minimally invasive procedures performed in 2006. Topping the list of most popular procedures were BOTOX™ injections, chemical peels and laser hair removal. The number of medical spas in the United States has soared from 45 to approximately 2,500 in just five years,

according to International Medical Spa Association. As the rate of patient demand continues to grow, we can expect more healthcare providers (and non-healthcare providers) to offer these aesthetic services. The ways in which the services are delivered will continue to expand.

The attraction of offering such lucrative medical services without the hassle of reimbursement draws many physicians (and other providers) to transition into the entrepreneurial practice of delivering aesthetic services. This draw can be so strong that proper training and supervision are not given a second thought. It

does not help that we are in a time of great flux of rules and regulations regarding aesthetic procedures—who can perform which procedure; what constitutes proper training; what, if any, supervision is necessary; and so forth. With so much variation, about the only thing that is guaranteed is the

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opportunity for a patient to find a way to enhance his/her looks on almost every corner.

From a regulatory and insurance standpoint, issues can abound. Issues may involve the corporate practice of

medicine by lay owners of medical spas, healthcare professionals not properly trained, or not working within the scope of their licensure. Such issues may lead to devastating results. Ultimately, the healthcare provider who performs the procedure is responsible for the outcome; and in most cases, the supervising physician is responsible as well.

STAYING ABOVE BOARD

Despite confusion on what is, or is not, allowable for both regulatory and liability purposes, there are some basics to follow to enable healthcare providers to “stay above board.” Think of it in terms of “How do I defend

providers, such as the state department of health, other boards (nursing boards, cosmetology profession, etc.) or other types of committee.

Almost every state has a medical corporation act, professional service corporation act, nursing and advanced practice nursing act, physician assistant practice act, barber, cosmetology, esthetics, and nail technology act. While all of these help clarify what is allowable regarding aesthetic procedures, there are many areas left undefined.

If the procedure constitutes the practice of medicine (as defined by the medical practice act in your state), then laws regarding the practice of

business corporation via the employed physician. In some states, the practice of lay corporations receiving profits from the provisions of a physician’s professional services is referred to as fee splitting and constitutes the unlicensed practice of medicine. This could subject the physician to penalties and fines within many states and could result in the loss of the physician’s license or a probationary period.

Rules and regulations do change. It seems there is a continual effort to clarify what is acceptable to each state’s medical board. No matter which state you work in, it is important to know whether you are in compliance with state laws. Too often healthcare providers feel that as long as they have malpractice insurance in place, they are acting above board within their practice setting. Just because your insurance is in place does not mean you are in compliance with the state rules and regulations.

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myself and the choices I have made?” One day you may have to defend yourself—whether it is a court of law because there’s a malpractice claim against you, or you are called before the state’s medical board to defend what or how you are practicing.

KEEP UPDATED ON REGULATIONS

Each of the 50 states, the District of Columbia, and the U.S. territories has a medical practice act that defines the practice of medicine and delegates the authority to enforce the law to a state medical board. There are currently 70 state medical boards authorized to regulate allopathic and osteopathic physicians. There are also other state agencies that regulate other healthcare

medicine come into play, as do the rules regarding who can perform which procedure and whether physician supervision is required. For example, in some states, the lay business corporation cannot hire the physician and render treatment through the lay





Because each state has its own applicable laws and regulations, you must seek legal counsel that is familiar with your particular state's rules and regulations and the health law issues you face in practicing retail aesthetic medicine. Seeking out advice and proper guidance from various associations and specialty boards that are emerging within the industry would also provide further knowledge.

PRACTICE WITHIN THE SCOPE OF LICENSURE AND SETTING

Staying above board also means practicing within the scope of your licensure. While some states allow physicians to delegate tasks to licensed and other personnel (unlicensed), who may perform what treatments is often based on the state's medical practice act and its interpretations by the applicable boards. This means that the aesthetician giving a BOTOX™

injection may indeed be in violation of the scope of his/her licensure.

It is important to know what non-physician providers are allowed to do as permitted by the appropriate professional board. For example, many states are now regulating who may use lasers or intense pulsed light devices. All states allow physicians to use them.

Beyond that, each state varies. Some states allow only PAs, NPs, and RNs to use the equipment, while other states allow the aestheticians to operate these devices so long as the penetration is not beyond the stratum corneum layer of skin.

Regardless of who performs the procedure, there are standards of care that have been deduced from

law and from professional standards established by cosmetic physicians in the industry. This sets a bar to which others can be compared. If it has been deduced from previous professional standards, for example, that contour thread lifts are only performed in a medical setting, it would be unprofessional to perform that procedure in a day spa or hair salon.

TRAINING

At this point, there is no universally accepted standardized program that enables a provider to become an aesthetic "specialist." While there are no set specifications for appropriate training, many of the national professional organizations related to aesthetics, such as the American Academy of Dermatology, American College of Surgeons, American Society for Dermatologic Surgery, and the State Medical Boards have offered recommendations. Current guidelines on training are not detailed or comprehensive, but many of these groups propose similar

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recommendations. I would refer you to each group for any of their suggestions as a starting point.

No matter what the recommendation, it is essential to have the appropriate level of training to ensure competency of the provider. Look for accredited programs that provide the didactic

training (physics, safety, and technique) as well as some hand-on training. Training of non-physician providers should be comprehensive and include theoretical and practical training, including an understanding of patient selection, adverse events, and an appreciation of the limits of the training.

There are many choices for training institutes, groups, or facilities. Finding out the details of training (the who, what, where, and how) is essential to knowing the value you will receive and if it will serve to provide appropriate training for the procedures you will perform. Many of the training groups have the ability to offer CMEs/CEUs, making them more attractive when it can add to your continuing education. Once initial training is received, continuing education for

defined by the individual state's medical board. For example, the North Carolina Medical Board writes that "supervising" encompasses overseeing the activities of, and accepting responsibility for, the medical services rendered by non-physician healthcare providers (as stated in the definition of supervising physician for a physician assistant). Regardless of who performs the treatment, the physician, in most states, is ultimately responsible for the safety of the patient.

Many state medical boards allow certain procedures to be delegated to non-physician certified or licensed office personnel (e.g., CMA,

LPN, NP, PA, RN). The key, though, is the supervision. Certain medical boards may allow this delegation, so long as the physician remains on-site physically so that he/she can respond quickly to the questions or problems that arise. Other states have developed a distance rule requiring the physician to be within a certain "drive time" in case problems arise. For example, the physician must be within a 30-minute drive if they have delegated for an allied healthcare

professional to perform the procedure. For many of the medical spas, the direct (or on-site) supervision poses a problem as some medical spas are structured so that the physician may only be on-site a couple hours a week, with the majority of the procedures being performed by non-physician providers.

In addition, some states are looking into the possibility that the physicians would be required to personally examine each patient before treatment begins and monitor the quality of services on a weekly basis. To these states, the ideal way to deal with patient treatment, even if an allied healthcare provider is performing the procedure, is for the physician to perform the good faith exam.

Colorado is looking at laws to tighten physician oversight at medical spas. It is not alone; Arizona and California are considering similar laws. Florida and Utah have already strengthened medical supervision in recent years. Washington has also made some very definitive remarks regarding who can use lasers and how a practice can implement risk

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the aesthetic procedures is critical to ensure adequate performance—no matter whether you are the physician or non-physician healthcare provider.

SUPERVISION

What is the appropriate level of physician supervision needed for non-physician healthcare providers? What exactly does "supervision" mean and what type is required (general vs. direct vs. personal)?

Supervision by physicians is often



management rules to better define what is acceptable under the board of medicine.

If your state has defined what supervision is required, I would suggest it is a wise move to follow. If your state has not set parameters yet, it again pays to think of the perspective—“How do I defend myself should I be called before the board or in the event of a malpractice lawsuit?”

UTILIZE PROTOCOLS/PROCEDURES AND CONSENT FORMS

You cannot meet everyone's expectations, especially within the aesthetic field. Keeping your patients informed of all the possible outcomes and side effects helps to protect against potential claims. Following


standardized protocols and providing consent forms goes a long way to help protect yourself and your practice.

It is important to disclose information and fully communicate with your patients about what to expect, what side effects and/or possible outcomes can occur. Full disclosure is the best approach, and this can be accomplished through the informed consent form. From a liability standpoint this can help protect you in the event of an adverse outcome. It is simply a matter of practicing good risk management.

It is helpful to institute guidelines for standardized procedures and protocols that address things such as: patient selection, patient education, instruction, and informed consent; procedures to be followed in the event of possible complications or side effects from the treatment; and procedures for emergency and urgent care situations. Call this a “quality assurance program” if you want. These protocols and procedures help direct how decisions are made, quality of treatments are monitored, troublesome situations are dealt with, and they provide the basics to enable the healthcare providers to make better decisions regarding patient care.

Performing aesthetic procedures is not without risks. Better to know how to take smart, informed risks rather than those that are made in haste and without knowledge. Regardless of the fact that all parameters for the appropriate practice of medical aesthetics are not set, following some of the basics covered in this article and utilizing some common sense

can go a long way to protect you and your practice. It will help keep you practicing “above board.”

While the ideas touched on in this article are to help you stay out of trouble, it is impossible to cover all the relevant issues in a short article. This article is not a substitute for professional legal advice, and I encourage all healthcare professionals involved in aesthetic medicine to discuss their pertinent situation with legal counsel in their own state. 



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