



Mind your business by knowing its laws



The medical spa business is booming—and so are the laws regulating it.

If you're an owner or about to become one, you need to be aware that these regulations affect everything from your business partnerships to your building, to who can do what types of treatment, and even how you advertise and market your business.

Here are a seven areas where the hand of the law touches:

1. Privacy

If you've gone to a pharmacy, to a doctor's appointment or even opened a new credit card account lately, you've probably had to read and sign a privacy statement. The recently enacted Health Insurance Portability and Accountability Act or HIPAA requires this. That act can affect many aspects of the medical spa business, from physical layout of your facility to how you advertise or market your business or practice. Joyce Blair, I.I.D.A., a designer with Stephen-Blair/Materialization, Inc. of Melville, NY, advises that staffers need to be trained to be especially discreet about where and how they discuss client/patient treatments and appointments.

2. Marketing & Advertising

HIPAA has placed new privacy restrictions that may affect how you market your business or practice. I would not use a quote or testimonial letter which describes anyone's medical conditions or treatments and also identifies that person without obtaining written consent," says attorney Barry Farkas, the managing director of Comprehensive Dermatology and Laser Center, the Ridgewood, NJ, practice of his wife Dr. Paige Applebaum-Farkas. "If a patient writes a letter to the doctor extolling the doctor's services, the patient has the right to expect that the letter will remain private. If it shows up on a website, or in marketing materials, that might be a problem." Some states also require that each part of the facility—spa/aesthetic treatments versus cosmetic medical treatments—be advertised separately. Physicians who are attached to spa facilities and spa owners must be aware of the laws governing such things as business logos or references to a medical practice in spa marketing materials. "

3. Treatments

Laser hair removal is considered the practice of medicine in some states, which means that it may only be performed by a physician, or under a physician's supervision? In other states, an electrologist, not an aesthetician, may perform it. There are also varying definitions of "supervision." It could mean that a physician must be physically present or may "supervise" via telephone. Most states have a Board of Medical Examiners (BME) and cosmetology board which often work in conjunction with each other to sort out what services fall under each commission's jurisdiction. For example, in some states nurses or physician's assistants are allowed to administer Botox® injections. Some states restrict acne or chemical skin treatments to a doctor's hands. California still allows licensed cosmetologists to do so, but places a threshold on the strength of the chemical peel. Two years ago, the NY State Board of Medicine decided that procedures using lasers or pulsed-light devices fell under the definition of "practice of medicine" and asked that their use be restricted to physicians or under the supervision of a physician.

4. Building & Zoning Laws

If you're building or undergoing a facility expansion, there are local zoning and building codes, electrical and plumbing regulations with which you need to become familiar—not to mention such things as environmental regulations about disposing of hazardous waste, and sewer or septic system laws in your particular location. Hiring a project manager to handle all the red tape and paperwork is definitely money well spent.

5. Taxes and Fees

As of September 1, New Jersey became the first state to impose a tax on cosmetic medical procedures. New Jersey practitioners will have to levy a 6% tax on all aesthetic treatments from dermabrasion to cosmetic dentistry. That's an important piece of legislation that will no doubt affect fees in that state. If you're looking for a silver lining in a new law, it's that the state recognizes a boom industry when it sees one, and is just trying to recoup some of the revenue the industry is currently generating.

6. Insurance

You also need to be cognizant of the laws governing professional liability. While all physicians have malpractice insurance, in today's litigious society, it's a good idea for aestheticians and medical spa owners to have professional liability insurance and for physicians expanding into the spa industry to add the latter to their malpractice protection. Ask your attorney or consultant to investigate the laws in your state about that.

7. Partnerships

In any legal discourse, when it comes to forming partnerships, physicians and non-physicians are almost considered like oil and water: they can't mix. There are some very specific regulations to be followed in forming such partnerships. Says Doug Sce, VP of Business Development for Beautiful Forever, "How doctors' fees are split with a non-physician business partner may require what's called a Management Service Agreement. That's an arm's-length agreement on how money and costs are going to be handled." Otherwise, simply splitting fees or taking a percentage of treatment fees would be considered practicing medicine—and we all know that's a legal no-no.



Cheryl Whitman is the CEO of Beautiful Forever Medical Spa Consulting.

Whether you are considering opening a new medical spa, cosmetic laser center, day spa, destination spa, wellness center, or simply looking to improve an existing one, Beautiful Forever can help. Our team of consultants will meet with you, evaluate your project goals and customize a program to your specific needs and budget. We guide you through each and every aspect of planning, from developing a business plan and organizing site development to overseeing all stages of product development, menu of services and promotional materials.