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The Legal Facelift: How to Build, Run, and Transition a Compliant Med Spa – Part II

Across the country, the medical spa industry is booming – offering patients aesthetic treatments like injectables, microneedling, and laser hair removal in a relaxed, luxurious environment. But behind the beauty lies a heavily regulated business. Despite the spa-like wellness atmosphere, med spas provide clinical services and must comply with the complex intersection of healthcare, corporate, labor, tax, and consumer protection laws.

Many compliance failures happen in the day-to-day operations of the med spa. Whether you are a physician, nurse practitioner, aesthetician, or entrepreneur, it is important to make sure you are running a legally sound and compliant med spa business – from the front desk to the treatment room.

This is the second blog post in a three-part series discussing the formation, operation, and exits of med spas. Here is a deeper dive into some of the legal considerations for operating a med spa:

- **Patient Intake and Medical Evaluation**
  - Before any treatment begins, patients should undergo a compliant intake process which can include a medical history review, assessment by a licensed provider, determination of medical necessity, and appropriateness of the requested treatment.
  - Allowing unlicensed personnel to assess patients or recommend treatments without clinical input may violate state law and result in liability.
- **Documentation and Consent**
  - Medical spas must keep clinical records that meet the same standards as any other medical office. This includes, but is not limited to, detailed treatment

notes and patient responses, signed informed consent forms for each procedure, and documentation of pre- and post-treatment instructions.
    - Intake forms, before-and-after photos, and follow-up communications should be stored in HIPAA-compliant software and not be shared via unsecured platforms.
- **Staffing and Training**
    - Normal staffing decisions often trigger legal concerns. Depending on state law, only licensed personnel can perform certain treatments, and training is not a substitute for licensure. All staff should have current licenses and those should be verified and documented.
- **Marketing and Social Media**
    - Day-to-day marketing, especially on social media, is a compliance minefield. Med spas should avoid misleading terms (e.g., "certified Botox provider," etc., should not be used as there is no such official certification).
    - Patient photographs should only be posted with written and documented HIPAA-compliant consent.
    - A social media and marketing compliance policy reviewed by counsel should be used and staff should be trained on the policy regularly.
- **Complaints and Complications**
    - What happens when a patient experiences or suffers from a bad or adverse reaction? Such experiences are medical complications and should be treated and documented as such. This requires prompt documentation, follow-up, and escalation to a medical provider is critical.
- **Pharmaceuticals and Inventory**
    - Med spas possess prescription medications and certain equipment/devices. Storage must comply with state pharmacy and Drug Enforcement Administration regulations. All medication and device usage should be tracked and logged for each patient.
- **Payment and Billing Practices**
    - Even if most services are cash-pay, med spas should provide clear pricing disclosure to patients and avoid offering discounts or incentives that could be constructed as "kickbacks" under state or federal law. If insurance is billed for procedures, the coding should be accurate and supported by documentation.
- **Sales and Membership Models**

    - Offering packages, memberships, or monthly subscription plans is a popular way to increase recurring revenue but must be structured carefully to avoid legal pitfalls.
- **Sales Tax Compliance**
    - Sales of retail products like skincare products, makeup, or at-home devices sold in a med spa are generally subject to sales tax.
    - Depending on the state, the sale of the services offered at a med spa may be subject to sales tax. Some states tax all services provided in a med spa, while other states bifurcate med spa services between medical services and cosmetic services. For the latter, medical services may be exempt from sales tax.
- **Corporate Compliance**
    - Med spas should be sure to maintain their legal existence with the appropriate state entities, such as the secretary of state, and ensure that all necessary permits and licenses are in effect.

A med spa may look like a wellness retreat, but the legal framework behind it is anything but relaxed. Compliance with healthcare regulations, employment laws, and corporate structure rules are essential to avoid fines, licensure issues, or even criminal penalties. Whether you are expanding your med spa or launching your first location, consulting with experienced legal counsel is critical. With the right legal framework your med spa can operate legally, compliantly – and beautifully.

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