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# The Booming Business of Botox - Legal Considerations for Medical Spas

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The number of medical spas in the United States grew exponentially since 2010 from just 1,600 to over 11,000 across the country.[\[1\]](#) The medical spa industry has seen steady growth over the last decade, with both health care providers and investors seeking opportunities to enter this lucrative business. This growth is only expected to continue, with predictions that the medical spa market will be valued at

nearly \$55 billion by 2033.<sup>[2]</sup> Several factors influence the popularity of the medical spa industry, including consumer desire for non-invasive yet effective procedures, advances in technology, and increased market competition.

But with this increased growth comes increased regulatory oversight. Although regulations have yet to keep pace with the development of the medical aesthetics industry, the patchwork of existing state regulations can present challenges to emerging businesses, as stakeholders navigate the complex regulatory landscape and stay abreast of developing regulations. This article sets forth key legal and regulatory considerations for stakeholders in the medical aesthetics industry when forming a medical spa business.

## **Background – Key Industry Stakeholders**

Medical spas offer a wide range of medical-grade and aesthetic services, including injectables, such as Botox and fillers, laser treatments, facials, chemical peels, microneedling, and semaglutide treatment, among other cosmetic procedures. Some of these services may be considered the practice of medicine depending on the state in which the medical spa operates.

Independent owners, franchises, private equity groups, and national chains all own in and contribute to the medical spa business. Approximately 90% of medical spas are owned by independent individuals or groups.<sup>[3]</sup> In contrast, franchises account for just 3% of the industry, while private equity groups account for another 3%.<sup>[4]</sup> National chains represent the smallest market share, comprising only 2% of the industry.<sup>[5]</sup>

Private equity investment in the medical spa sector has recently surged.<sup>[6]</sup> A report published by McKinsey & Company highlighted the increased investment of private equity firms in the medical spa sector, finding that in the preceding five-year period since 2021, private equity firms invested approximately \$3.1 billion in more than 400 medical spa and aesthetic clinic transactions.<sup>[7]</sup> Since then, medical spas have continued to attract significant interest from private equity investors due to the sector's growth potential and expanding consumer base.<sup>[8]</sup> This influx of private equity capital has manifested in two primary investment strategies: outright acquisitions, where private equity firms acquire full ownership of a medical spa, and growth capital investments in which a firm provides funding to medical spas to support expansion without acquiring full control of the business.<sup>[9]</sup>

For medical spa owners, partnering with private equity firms can offer significant benefits, including operational support and access to strategic resources. By consolidating multiple locations, private equity firms streamline business functions, such as marketing, human resources, and finance, allowing medical spa owners to focus more on patient care while the firm manages day-to-day, non-clinical operations.<sup>[10]</sup>

But these arrangements present corporate practice considerations when structuring a medical spa business.

## Corporate Practice Restrictions

Medical spas offer medical-grade services, and states classify certain procedures as the practice of medicine. Certain states maintain corporate practice doctrines, which prohibit a corporation from rendering professional health services and directly employing certain types of licensed clinicians, such as physicians, to provide these services. Corporate practice restrictions are designed to ensure that corporate interests do not influence clinical decision-making or professional medical judgment.

As such, the business structure of medical spas will vary based on state corporate practice of medicine rules.<sup>[11]</sup> Some states require 100% physician ownership of medical spas, while other states mandate that physicians own at least 51% of the business. Certain states allow licensed medical professionals, such as nurse practitioners, registered nurses, and physician assistants (PAs) to have full ownership of a medical spa, while a few states allow non-licensed individuals and entities to own medical spas. Failure to comply with state specific regulations can result in claims of unlicensed practice of medicine or violations of state corporate practice doctrines.

In Illinois, for example, medical spas are considered medical practices that render professional medical services and therefore must operate as a professional services entity. Illinois prohibits non-licensed individuals from owning an entity that provides professional services and instead requires individuals licensed to perform the professional services, such as physicians, to own the entity. Texas similarly restricts ownership of medical spas to physicians and allows only PAs to own minority shares or serve as a minority partner.<sup>[12]</sup>

In contrast, states that do not enforce or maintain corporate practice of medicine restrictions offer more flexibility in ownership and allow lay persons and entities to own and operate medical spas. In Alaska, for example, there is no statutory or regulatory prohibition on non-physicians owning a medical spa. Physicians or nurse practitioners with full practice authority, however, must supervise all medical-grade procedures.<sup>[13]</sup> Connecticut follows a similar model, permitting non-medical professionals, including estheticians, to own medical spas. But these esthetician owners can only perform non-medical services within the scope of their licenses, and medical professionals must be employed to conduct any medical treatments.<sup>[14]</sup> Prior to forming a medical spa, parties will want to confirm whether the state in which they intend for the medical spa to operate has a corporate practice doctrine that restricts who can own the business.

## The MSO-PC Model

In states that prohibit the corporate practice of medicine, private equity investors will often participate in medical spas through an “MSO-PC Model,” also known as a “friendly physician model.” Under the MSO-PC Model, investor-backed enterprises fund a management services organization (MSO), which then contracts with a professional entity or professional corporation (PC) to provide certain administrative services to the medical spa under a management services agreement, which may include billing, payer credentialing, human resources functions, information technology support, and facility management and maintenance. Importantly, in this arrangement, the professional entity and the licensed clinicians it employs maintain control over clinical decisions, while the MSO’s responsibilities are limited to the business operations.

As compensation for their services, MSOs collect a fair market value management fee, which can be structured as a monthly fixed fee, cost plus service, or percentage of revenue-based fee depending on state fee splitting restrictions. Some states prohibit licensed clinicians from dividing fees received from professional services with other individuals and entities, which prevents an MSO from obtaining revenue from the business related to its clinical operations. In states with fee splitting restrictions, MSOs may consider establishing a monthly fixed fee, which should be adjusted if the scope of services changes.

Regardless of how the parties decide to structure a management fee, the parties should ensure that the management fee reflects compliance with applicable health care laws, determine the fee at arms-length, and use fair market value standards. Importantly, parties should not condition the MSO's compensation based on the volume or value of referrals to the medical spa. Medical spa owners must continue to review the enforceability of the MSO-PC model in their states.

## **Scope of Practice and Licensing Considerations**

Medical spas employ a variety of licensed clinicians to provide medical aesthetic services, including physicians, APRNs, PAs, and registered nurses. Licensed providers administer various treatments depending on their scope of practice in their applicable state. For example, advanced practice providers typically administer certain laser procedures and injectables that penetrate beyond the initial layer of the skin, while estheticians may focus on providing facial services or procedures that do not require advanced medical knowledge. State law governs the type of services providers may perform and the supervision requirements for providers with limited practice authority.

PAs generally must practice under the supervision of a physician or provider with full practice authority through a formal collaborative practice agreement. These agreements outline the scope of the services a PA is permitted to perform and require the collaborating physician to offer supervision and consultations with the PA on a regular basis. Some states require physicians to be present during certain procedures a PA performs, while other states do not require physicians to be on site so long as they are available by electronic means. States also may limit the number of PAs a physician may supervise.

APRNs without full practice authority are subject to similar requirements in some states and must practice under the supervision of a licensed physician through a collaborative practice agreement. Some states permit APRNs to practice independently once they have completed the requisite number of clinical hours under physician supervision and continuing education. As with PAs, requirements for advanced practice registered nurses vary by state, so medical spa owners should carefully review the requirements in the state in which they operate.

Estheticians likewise must comply with state license rules and are generally limited to performing procedures, such as facials, that do not constitute the practice of medicine. If, however, estheticians perform medical-grade services, they must receive the appropriate training and must act under the direction of a licensed clinician, such as a registered nurse or an advanced practice provider.

Regulators have increasingly acted against medical spas for lack of proper supervision or practice within the scope of a provider's license, so it is critical that medical spas ensure appropriate supervision and delegation arrangements are in place.



Although there are robust license requirements for the types of providers who perform treatments and procedures at medical spas, many states have yet to implement a facility-based licensing requirement for medical spas. Few states require medical spas to be licensed as a health care facility, while most states do not have any formal requirement but may nevertheless treat medical spas as a type of medical facility subject to scope of practice requirements, corporate practice restrictions, and other applicable laws related to furnishing professional medical services.

Certain equipment that providers use at medical spas is also subject to licensure. A medical spa may need to register certain lasers with state departments of health. For example, CO2 lasers are class IV that may be subject to state-based laser registrations and may only be administered by licensed physicians or trained clinicians under the supervision of a physician.

Regardless of the license type, any license that is required to operate a medical spa and provide services within that medical spa should be active and unencumbered.

## Enforcement Trends

State regulatory agencies have expressed growing concern over the increased demand for, and use of, medical spas and the level of supervision required by licensed professionals in an industry that has largely been unregulated. State regulators have also scrutinized the MSO-PC Model against existing corporate practice doctrines.

Most recently, the North Carolina Medical Board (NCMB) published guidance to call into question certain practices it deemed attempts to circumvent the state's corporate practice prohibition and supervision requirements.<sup>[15]</sup> An internal medicine physician was hired as the medical director of a new medical spa and signed a contract to receive \$2,000 per month for the position despite having no active role in the medical spa's operation. After a patient suffered burns from a laser treatment a PA performed and filed a complaint with the NCMB, NCMB discovered that the physician was listed as the supervising physician for the PA, even though the physician had never agreed to supervise the PA and was not involved in the operation of the medical spa.<sup>[16]</sup> NCMB used this case study to call into question "straw ownership" arrangements whereby licensed physicians are made the sole shareholders of a medical spa to "disguise the fact that control and decision-making authority in the practice is held by a non-licensee."<sup>[17]</sup> NCMB stated that these arrangements are unlawful and could subject medical spa owners to liability. NCMB also highlighted the critical issue of physician supervision, noting that even if physicians are not directly involved in providing medical care, if they supervise a PA or NP employed by the entity or agree to supervise such professionals, they could be held accountable for failing to provide necessary supervision.<sup>[18]</sup>

Failures to adhere to state-specific regulations governing medical spa ownership and operations has led to state regulatory agencies taking more aggressive enforcement in recent years. In Texas, the Texas Medical Board suspended the license of a physician who served as the medical director of a medical spa after the physician admitted to "allowing nonmedically licensed individual[s] ... [to] perform tumescent liposuction procedures on patients at the med spa" finding that it constituted an unprofessional conduct.<sup>[19]</sup> More recently, the Illinois Department of Financial and Professional Regulation (IDFPR) found that a physician aided and abetted the unlicensed practice of medicine by a non-licensed individual at a medical spa.<sup>[20]</sup> The IDFPR placed the physician's license on indefinite probation for a

minimum of three years, also citing unprofessional conduct and diversion.[\[21\]](#) In another action, the IDFPR issued a \$5,000 fine to a physician, finding that the physician served as a medical director of a medical spa, where unlicensed individuals performed Botox injections and other medical-grade procedures without the supervision of a physician.[\[22\]](#)

Physicians and medical spas may also face lawsuits for noncompliance with applicable state regulations, including supervision requirements. In *Lake Jackson Med. Spa, Ltd. v. Gaytan*, the Texas Supreme Court held that medical directors of a medical spa can be held liable under the Texas Medical Liability Act (TMLA) even if they did not directly perform the procedure.[\[23\]](#) The plaintiff sued the medical spa, its employee esthetician, and the owner physician of the medical spa alleging that the esthetician negligently performed various skin treatments that caused scarring and discoloration and that the physician negligently supervised the esthetician.[\[24\]](#) The court determined that the physician's overall responsibility for patient care, including overseeing the services provided by delegated personnel such as estheticians, established a physician-patient relationship, even though the physician was not directly involved in furnishing the procedure in question.[\[25\]](#) This case highlights that a physician-patient relationship can arise from a physician's oversight of delegated services and that medical directors can be held liable based solely on their supervisory role. This case further underscores the importance of potential investors and owners complying with all state regulations governing medical spas.

Most recently, on March 4, 2025, Texas State Representative Angelia Orr introduced Texas House Bill 3749 (H.B. 3749), which seeks to enhance physician oversight of medical spas.[\[26\]](#) The bill would require medical spas to have a qualified physician director and mandate policies governing quality of care and physician delegation, supervision, and training of cosmetic providers.[\[27\]](#) In addition, the bill would classify medical spas as "medical practice settings" and require that the facility post a notice whenever a licensed physician is not present.[\[28\]](#) Moreover, the bill would require physicians to conduct initial patient assessments and create written treatment plans for each patient.[\[29\]](#)

## The Importance of Compliance

Most medical spas are self-pay and do not accept commercial or government insurance, which may reduce exposure to certain enforcement action taken against entities that otherwise participate in government programs. The medical spa industry, however, is rapidly expanding, which opens it up to increased regulatory scrutiny and a range of possible adverse consequences. As this oversight grows, medical spas should adopt strong compliance functions and operations. Smaller businesses may not have the resources to maintain a full compliance program but should still have staff or outside counsel devoted to tracking federal and state legislative, regulatory, and policy updates. Larger operations may have the resources and the need to develop a more formal compliance structure to oversee the various facilities it operates. In both cases, compliance operations should include policies and procedures that focus on key risk areas, such as licensing and credentialing, scope of practice, medical records retention, patient complaint management, data privacy and security, and employee training, among other topics. Medical spas should also implement routine and comprehensive training to ensure that staff are following applicable law.

## More Growth Ahead

The U.S. medical spa market is currently valued at approximately \$6 billion and is projected to experience an annual rate exceeding 14% over the next five years.<sup>[30]</sup> This rapid expansion has not only attracted significant interest from private equity investors eager to capitalize on the growth potential but has also brought increased regulatory oversight, with states implementing more stringent regulations. Recent enforcement efforts highlight the importance for potential investors and business owners to not only stay informed of current laws applicable to medical spas but to also monitor ongoing developments closely, so that they are able to adapt to future changes and avoid noncompliance and potential liability.

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[1] [Medical Spa Marketing Stats and Trends For 2024 - Brenton Way](#); [The Number of Medical Spas in the US – Finanssenteret](#).

[2] [Medical Spa Market Demand to Hit USD 59.4 Billion by 2033 | Globally at 13.2% CAGR](#).

[3] Madilyn Moeller, *The Evolving Face of Medical Spa Ownership*, AMSPA (Dec. 27, 2022), <https://americanmedspa.org/blog/the-evolving-face-of-medical-spa-ownership>.

[4] *Id.*

[5] *Id.*

[6] [Private Equity and Growth Capital:... | American Med Spa Association](#); See also, [Medical Aesthetics Is Resilient, Growing, and Attracting Investors | BCG](#).

[7] Olivier Leclerc et al., *From Extreme to Mainstream: The Future of Aesthetics Injectables*, MCKINSEY & COMPANY (Dec. 20, 2021), <https://www.mckinsey.com/industries/life-sciences/our-insights/from-extreme-to-mainstream-the-future-of-aesthetics-injectables>.

[8] Madilyn Moeller, *Private Equity and Growth Capital: Medical Aesthetics' New Reality*, AMSPA (Nov. 29, 2023), <https://americanmedspa.org/blog/private-equity-and-growth-capital-medical-aesthetics-new-reality>.

[9] *Id.*

[10] *Private equity in aesthetics: A new market model for physicians*, AMS (Aug. 21, 2024), <https://www.multispecialtysociety.com/community/the-aesthetic-multispecialty/articles/private-equity-in-aesthetics/details>

[11] *Laws for Opening a Med Spa*, AMSPA, <https://americanmedspa.org/opening-a-med-spa-laws#:~:text=It%27s%20important%20to%20highlight%20that,operate%20a%20medical%20spa%20compli>

[12] Tex. Bus. Orgs. Code Ann. § 301.012(a).

[13] Alaska State Medical Board, *Guidelines for Physicians in Delegating Procedures to Nonphysician Personnel When Performing Certain Dermatological Procedures*, Policies and Procedures, [https://www.commerce.alaska.gov/web/Portals/5/pub/MED\\_Guide\\_Dermatological.pdf](https://www.commerce.alaska.gov/web/Portals/5/pub/MED_Guide_Dermatological.pdf).

[14] See Conn. Gen. Stat. Ann. § 19a-903c(b).

[15] North Carolina Medical Board, *Lessons from NCMB's Disciplinary Committee: Are you aiding the unlicensed practice of medicine?* Newsletter, Aug. 30, 2024, <https://www.ncmedboard.org/resources-information/professional-resources/publications/forum-newsletter/article/lessons-from-ncmbs-disciplinary-committee-are-you-aiding-the-unlicensed-practice-of-medicine>.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Stephanie Innes, *Tucson doctor surrenders license over liposuction and prescribing issues*, AZ DAILY STAR (Apr. 21, 2017), [https://tucson.com/news/article\\_eab82e96-c64f-53e9-960b-cd611de86b1e.html](https://tucson.com/news/article_eab82e96-c64f-53e9-960b-cd611de86b1e.html).

[20] Illinois Department of Financial and Professional Regulation, News, September 2023, [2023-09enf.pdf \(illinois.gov\)](#).

[21] *Id.*

[22] Illinois Department of Financial and Professional Regulation, News, May 2023, [2023-05enf.pdf \(illinois.gov\)](#).

[23] *Lake Jackson Med. Spa, Ltd. v. Gaytan*, 640 S.W.3d 830, 834 (Tex. 2022).

[24] *Id.* at 834.

[25] *Id.* at 842.

[26] H.B. 3749, 89th Leg., R.S., 2024, § 172.001.

[27] *Id.* §§ 173.051, 173.052, 173.053.

[28] *Id.* §§ 172.002, 172.003.

[29] *Id.* § 172.102(c).

[30] *Why Are Private Equity Firms Buying So Many Medical Spas?* TRUE NORTH MERGERS & ACQUISITIONS (Apr. 21, 2023), <https://www.tnma.com/blog/private-equity-firms-buying-medical-spas/>.

#### ARTICLE TAGS

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