

GUIDELINES FOR NON-INVASIVE MEDICAL AESTHETIC PRACTICES (MEDICAL SPAS)

PREPARED BY

***THE AMERICAN MED SPA ASSOCIATION
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The continued success of the medical aesthetic industry, as well as the growth of consumer demand for medical aesthetic services, is strongly linked to having safe, high-quality medical practices that comply with federal, state and local laws. Damage to the industry's reputation occurs every time a patient is harmed, either by poorly trained or improperly supervised individuals, or by media reports demonstrating a lack of understanding of the basic rules governing the provision, delegation and supervision of aesthetic medical treatments.

Despite more than a decade of consistent industry growth throughout the United States, there is lack in the consistency of rules across state lines. Laws differ from state to state, treatment to treatment, and provider to provider, making it difficult to provide a uniform and clear framework for aesthetic practices that are, in good faith, intending to be compliant with all applicable laws.

The American Med Spa Association (AmSpa) has prepared a set of guidelines aimed at providing a framework that will serve as the standard by which all medical aesthetic practices will safely operate, irrespective of their state. These guidelines are meant to describe the way a *minimally compliant* medical spa should operate. Given that different states have different rules for different treatments and practitioners, there naturally may be conflict between these guidelines and certain state regulations. To resolve any differences, AmSpa recommends that the more restrictive approach be taken in instances where differences exist. In states where the laws or rules are not as strict as these guidelines, these guidelines should be followed; in states with stricter rules, the state rules should be observed.

One further note – the terms “medical spa,” “non-invasive medical aesthetic practice,” and “medical aesthetic practice” are used interchangeably throughout these guidelines. To be clear, there is no legal difference between a “medical spa” and an “aesthetic medical practice”: both offer medical aesthetic services, and both are subject to the same state and federal regulations. The term “non-invasive” refers only to the fact that the aesthetic medical services offered are non-surgical in nature. AmSpa utilizes the term “medical spa” because that is the term that is most commonly used by the public. But irrespective of whether the business is called a “medical spa,” an “aesthetic practice” or “aesthetic center” (or any of the other terms we have seen arise), if they provide medical aesthetic services as described herein they are covered by the provisions of these guidelines.

Table of Contents

Article I: The Provision of Medical Treatments	3
1.01 Medical Procedures.....	3
1.02 Examples of Aesthetic Medical Procedures	3
1.03 Non-medical Procedures.....	4
1.04 State Law Exemptions	4
Article II: Medical Directors, Protocols and Training.....	5
2.01 Medical Directors.....	5
2.02 Medical Director Requirements.....	5
2.03 Protocols	6
2.04 Independent Practice of NPs and PAs	6
2.05 Training.....	6
2.06 Training Requirements.....	6
Article III: Initial Examination, Diagnosis and Treatment Plan	7
3.01 Examination Prior to Treatment.....	7
3.02 Diagnosis and Treatment Plan	7
3.03 Exceptions.....	8
Article IV: Provision of Medical Services, Delegation and Supervision	9
4.01 Provision of Medical Services at a Medical Spa	9
4.02 Standard of Care	9
4.03 Delegation of Medical Services	9
4.04 Supervision	10
Article V: Restrictions of Certain Medical Treatments and Providers	10
5.01 Restrictions of Specific Treatments	10
5.02 Licensed Medical Professionals.....	11
5.03 Non-medical Professionals and Medical Assistants (MAs).....	11
5.04 Laser Technicians	11
5.05 Aestheticians and Cosmetologists.....	12
5.06 Dentists	12
Article VI: Ownership and Compensation.....	13
6.01 Ownership and Compensation	13
6.02 Independent Practice of NPs and PAs	13
Article VII: Advertising, Marketing and Social Media	14
7.01 Use of Advertising, Marketing and Social Media	14
7.02 Use of Photographs.....	14
7.03 Interactions in Social Media	15

Article I

The Provision of Medical Treatment

1.01 Medical Procedures.

The core of a medical spa's services are *aesthetic medical procedures* meant to enhance the patient's appearance or improve their health and wellness. While the procedures tend to be less invasive than those typically offered at a plastic surgeon's office, they are not without risk. Therefore, they must be provided with the same professional skill and care afforded to all medical procedures.

The consistent element of aesthetic medical procedures that differentiates them from non-medical services is their effect on living tissue. Services offered at a medical aesthetic practice stimulate, alter or destroy the patient's living tissue, whereas non-medical procedures affect only the non-living surface of the skin.

Accordingly, as new technology and new treatments are introduced to the market, a medical spa and its practitioners should always fall back on the mechanism under which the treatment achieves its desired result. Does the treatment achieve its result by stimulating, altering or destroying *living* tissue? If so, it is considered a medical treatment. Does the treatment's mechanism impact tissue deeper than the stratum corneum? If the answer is yes, it is a medical treatment.

How the treatment delivers the mechanism of action is of secondary consideration. What that mechanism of action does to the body is what is important for purposes of being labeled a medical procedure. In other words, if the result of its action is to alter living tissue, even if it does not physically touch living tissue, it is a medical treatment. Cryolipolysis, for example, does not fire a laser or energy into tissue, but the result of the application of cold is to destroy living fat tissue, thereby making it a medical treatment.

1.02 Examples of Aesthetic Medical Procedures.

The following is a non-exhaustive list of categories of aesthetic medical procedures. Please note that this list is extremely broad and may not cover recently released techniques and devices.

- Laser or energy-based skin and hair removal procedures
- Intense pulsed light (IPL) procedures
- Ultrasonic devices
- Radio frequency (RF) devices
- Heating or cryolipolysis devices
- Electrical stimulation
- Microneedling of any depth
- Injection of soft tissue fillers, polydioxanone (PDO) threads or neuromodulators

- Intravenous (IV) therapy
- Dermabrasion beneath the stratum corneum
- Medium-depth chemical peels (beneath the stratum corneum)

1.03 Non-medical Procedures.

Medical spas do not exclusively offer medical services. Medical spas may offer services that are complementary to their medical services, but that do not impact living tissue. These may include services that are regulated under state cosmetology statutes or permanent makeup services that fall under state laws on tattooing. Non-medical treatments include, but are not limited to, skin exfoliation, light chemical peels, microcurrent therapy, water dermabrasion devices, microblading and cosmetic tattooing.

Non-medical procedures do not need to be provided by medical professionals and are not subject to these guidelines. However, for medical spas to be compliant with these guidelines, any of these complementary non-medical services must be provided in accordance with state law. This may require employing licensed cosmetologists or aestheticians, as well as being licensed as a salon by a state cosmetology board.

1.04 State Law Exceptions.

Some states have taken measures to define treatments so that they either automatically become medical treatments or are statutorily defined as non-medical treatments. The most prominent example of this is laser hair removal, which has been regulated as an individual treatment by approximately nine states. However, other states, such as New York, have conspicuously excluded laser hair removal, thereby making it essentially unregulated.

Irrespective of the designation by each state, the purpose of these guidelines is to provide national consistency for the industry. Therefore, AmSpa recommends that, regardless of whether a state has designated a treatment “non-medical,” if it falls under the above definition of a medical procedure—i.e. it impacts or affects living tissue—medical aesthetic practices should regard it as a medical treatment. Accordingly, in a state such as New York that does not regulate laser hair removal, AmSpa recommends that it be regarded as a medical treatment anyway. This form of self-regulation is not only safer for the public, but it provides national consistency and predictability across the industry.

Comment to Article 1: The aesthetic industry is constantly innovating; new techniques and technologies are always being developed. The purpose of this rule is to provide a single, easy-to-follow standard for how aesthetic procedures, both current and future, should be approached. If the treatment “impacts” living tissue—that is, alters, stimulates or destroys anything beneath the stratum corneum—it should be considered a medical treatment and is subject to these guidelines. In the past, states and regulatory bodies have addressed medical spas and the procedures they offer in an inconsistent, reactive and disjointed way, if they are even addressed at all. By accurately identifying the “medical” nature of aesthetic procedures, it can be ensured that they are provided in a safe and consistent way that focuses on positive patient outcomes.

Article II

Medical Directors, Protocols and Training

2.01 Medical Directors.

Except as provided in Section 2.04, as a medical practice, every medical spa must be led and overseen by a supervising physician, commonly referred to as a medical director. The medical director (or “supervising physician,” if not called a medical director) is a licensed physician, either as a medical doctor or osteopathic doctor, who is professionally responsible for all the medical procedures provided at the medical spa. Medical directors may delegate the authority to perform treatments to certain practitioners who have the training and skill to safely perform the procedures, but they still retain ultimate responsibility for the medical treatment provided at the practice.

2.02 Medical Director Requirements.

The medical director has the ultimate responsibility to ensure that the medical spa is operating in a safe and compliant manner. To be able to effectively and appropriately supervise a medical spa, the medical director must:

- a) Possess the appropriate education, training, experience and competence to safely administer, delegate and supervise each aesthetic medical treatment at the medical spa;
- b) Ensure appropriate supervision of each medical aesthetic treatment performed at the medical spa;
- c) Accept ultimate responsibility for the safety of the patients treated at the medical spa;
- d) Ensure that the medical spa’s providers are trained and qualified to provide the procedures they have been tasked to provide;
- e) Ensure the medical spa is equipped with all necessary equipment, supplies and processes to address medical complications and emergencies; and
- f) Develop and sign written protocols for aesthetic medical treatment to be performed at the medical spa.

To be clear, it is against the prevailing standard of care for a physician—or nurse practitioners (NP)/physician assistants (PA), where applicable—to:

- i. Accept the responsibilities of a medical director without being trained and qualified in all medical procedures performed at the medical spa;
- ii. Delegate treatments while not being trained and qualified in the procedures they are delegating; or
- iii. Fail to ensure proper supervision, training and qualification of providers at the medical spa.

2.03 Protocols.

In order to increase consistency and quality of care, every medical treatment or procedure offered in a medical spa must have a detailed written protocol or standard operating procedure (SOP) developed by the medical director or responsible physician (or NP/PA, where applicable). The protocols should provide detailed procedures to be followed in administering the treatments and provide guidance on addressing and responding to adverse incidents. The protocols should be specific enough so that medical decisions are not left to the discretion of the non-physician provider.

2.04 Independent Practice of NPs and PAs.

Many states have adopted “independent practice” statutes for NPs, and more are doing so each year (legislation has been introduced in some states seeking independent practice for PAs, as well). In these states, NPs have the authority to practice independently—i.e., practice without a supervising physician—provided all requirements of the state’s independent practice law have been satisfied. These licensed independent practitioners can serve as medical directors and owners under these guidelines, subject to the restrictions their state places on their scope of practice, ownership of professional entities or authority to delegate medical spa procedures. Accordingly, the guidelines relating to “medical directors” or “physicians” also apply to NPs and PAs who have independent practice laws in their state and are in compliance with all requirements of state statutes and regulations.

2.05 Training.

Medical directors and every provider, whether licensed or unlicensed, must have appropriate training in the treatments they provide. Specific training varies from procedure to procedure, but, at a minimum, must include a hands-on, practical component in addition to didactic instruction. The training should provide significant information on identifying and addressing complications or adverse incidents, in addition to the direct techniques and theories of the procedure. Introductory-type training, as often provided by device manufacturers, can make up a component of a provider’s training, but cannot be the sole source of instruction. All persons should maintain and develop their acquired skills through periodic additional training or directly supervised demonstrations.

It is the medical director’s (or supervising physician’s, NP’s or PA’s, where applicable) responsibility to ensure each provider is trained and qualified to perform the treatments they are tasked with performing.

2.06 Training Requirements.

[RESERVED]

Comment to Article 2: One of the biggest challenges the industry must address is medical spas that are operated either without proper physician supervision or by physicians who are unqualified to do so. Because medical treatments are involved, medical spas need to be overseen by physicians (or, in states that allow for it, NPs or PAs), known as medical directors. These guidelines establish that a medical spa's medical director must be trained and qualified to perform and supervise all treatments performed at the medical spa. Further, the medical director is responsible for all medical treatments that are performed at the medical spa, and responsible for all practitioners who provide treatments at the medical spa. All medical directors and providers must be properly trained in the procedures they are providing, and it is the medical director's responsibility to ensure such training and qualification is obtained by every provider at the medical spa. AmSpa is in the process of developing explicit training guidelines for medical spas.

Article III

Initial Examination, Diagnosis and Treatment Plan

3.01 Examination Prior to Treatment.

Except as provided in Section 3.03, prior to any medical aesthetic treatment, an initial face-to-face examination of the patient should be performed by a qualified physician. This initial examination should consist of, at a minimum, the obtaining and reviewing of the patient's medical history and a physical examination of the areas of the body that will receive treatment.

3.02 Diagnosis and Treatment Plan.

- a) *In General* – Once the initial examination is complete, a diagnosis and treatment plan for each medical treatment should be developed by the qualified physician. The diagnosis and treatment plan should follow the standard of care required to ensure the patient is a good candidate for each particular medical procedure.
- b) *Delegation of Plan* – The treatment plan should include, at a minimum, instruction on doses, settings and specific areas of treatment. The treatment plan may provide for a course of treatment over a period of time or a number of treatments.
- c) *Time Frame of the Plan* – Provided the patient's health remains unchanged, a patient examination is not required before every visit under the treatment plan (although AmSpa recommends a consultation at least every 12 months). Changes in the patient's health or the application of new procedures, however, would necessitate a new examination, diagnosis and treatment plan.
- d) *Follow-up Questions* – AmSpa recommends that before rendering any follow-up care consistent with the treatment plan, the patient should always be asked if a change in their health has occurred. If a change in health has occurred and it impacts the ability of the provider to continue the treatment (based on standard operating procedures), it is

recommended the procedure be suspended until after a follow-up appointment can be made with the qualified physician.

- e) *Delegation of Diagnosis and Treatment Plan* – The qualified physician may never delegate the diagnosis and treatment plan to registered nurses (RNs), licensed vocational nurses (LVNs), licensed practice nurses (LPNs) or medical assistants (MAs), as it is not within the scope of those licenses to render such medical services.

3.03 Exceptions.

- a) NPs or PAs may perform the initial examination, diagnosis and treatment plan if they are trained and qualified to do so and have met all applicable state requirements, including, but not limited to, scope of practice, supervision and delegation regulations.
- b) Telemedicine may be used for the initial exam, provided that:
 - i. It is performed by a qualified physician (or NP/PA, when applicable);
 - ii. Applicable state telemedicine requirements are met and followed;
 - iii. The physician (or NP/PA, when applicable) can, through telemedicine, perform the same quality of physical examination, diagnosis and treatment plan as if they were in the same room; and
 - iv. Proper consents are obtained and proper documentation made in the patient’s medical record.

Comment to Article 3: Every patient must be directly examined by a licensed professional who is able to make medical diagnoses and prescribe treatments, such as a physician. In many states, NPs and PAs are also permitted to examine and prescribe treatments. The examination must be face to face, where the practitioner directly observes the patient and is not working solely from static images or charts. The purpose of the exam is two-fold:

1. *To ensure that the patient does not have any health concerns that would prohibit them from receiving the procedure; and*
2. *To determine which specific treatment, and what settings and dosages are appropriate to achieve the patient’s desired outcome.*

Following the exam, the practitioner must develop a written treatment plan that identifies the treatments, treatment sites, device settings or dosages, and frequency. This treatment plan, in conjunction with a procedure-specific protocol, provides guidance and instruction for the delegated practitioner to follow.

NPs and PAs may be delegated the initial examination and treatment plan, provided they have met all state regulations for doing so. In addition, in most circumstances, the examination must be performed in person and face to face, but in states that allow physicians to practice using telemedicine, the exam can be performed remotely. If the practitioner chooses to employ telemedicine, the live video feed must be of sufficiently definition so as to provide a view that is the same as or superior to the one they would have if they were directly observing the patient in person. Low-resolution video lacks the detail needed to make an effective determination or to notice potential contraindications to treatment. Low-resolution telemedicine is inappropriate to use in a medical spa setting.

Article IV

Provision of Medical Services, Delegation and Supervision

4.01 Provision of Medical Services at a Medical Spa.

Once a proper initial examination and diagnosis are made and a treatment plan is developed, the treatment may be performed by, or delegated to, a qualified provider under the following minimum requirements:

- a) The provider is trained and qualified to perform the specific treatment;
- b) The provider is properly supervised; and
- c) Proper protocols have been developed by the qualified supervising physician or medical director to address complications and adverse events.

4.02 Standard of Care.

The medical procedures offered by medical spas must be provided in accordance with the prevailing standard of care, and only by trained and qualified providers in a manner that maximizes the patient outcomes and minimizes complications or injuries.

4.03 Delegation of Medical Services.

Delegation is the formal process where a physician (or NP/PA, where applicable) transfers the authority to perform a treatment to another person. The delegating professional retains all professional responsibility to ensure that the treatment is carried out in accordance with the prevailing medical standard of care.

Procedures and treatments should only be delegated to persons who are qualified, meaning that they have been trained and are skilled in the specific procedure. Often, the necessary training and skill will require that the person hold a professional license, such as a NP or PA, in addition to treatment-specific training.

Once a proper initial examination and diagnosis are made and a treatment plan is developed, the performance of the treatment may be delegated to a qualified practitioner who practices under the supervision of an appropriate medical professional under the following minimum requirements:

- a) The delegated provider is trained and qualified to perform the specific treatment;
- b) The delegated provider is properly supervised;
- c) The delegating and supervising practitioners are qualified; and
- d) Proper protocols have been developed by the qualified supervising physician to address complications and adverse events.

4.04 Supervision.

Supervision is the process where the physician or an advanced licensee, such as a PA or NP, monitors and oversees a delegated practitioner during the performance of a procedure. The levels of supervision vary based on the skill and license of the person to whom the procedure is delegated, as well as the difficulty and risks of the procedure. In all instances, the supervising professional must be able to respond immediately to address complications and/or emergencies.

Different levels of supervision referenced in these guidelines include the following.

- a) *General or Indirect Supervision.* The physician or supervising practitioner is off site, but immediately available by telecommunication.
- b) *Direct Supervision.* The physician or supervising practitioner is on site and able to directly observe the treatment being performed, although is not necessarily in the same room, at all times.

Comment to Article 4. At the heart of these guidelines is the requirement that medical aesthetic treatments only be performed by or delegated to qualified and trained professionals under proper supervision. After the proper examination and treatment plan, medical aesthetic treatments may be delegated and performed only if the provider, the delegating practitioner and the supervising provider are trained and qualified in the treatment(s) being performed and delegated. The type of supervision varies depending on the type of treatment and the practitioner performing the treatment; regardless, it is recommended that a practitioner with a license of RN or above (PA, NP or physician) be present at the facility at all times.

Article V

Restrictions of Certain Medical Treatments and Providers

5.01 Restrictions of Specific Treatments.

Certain medical aesthetic treatments have more affiliated risk than others, and the risk of serious complications and/or side effects from certain treatments demands that only certain licensed and medically trained practitioners provide those treatments. Regardless of whether state regulations allow other practitioners to perform these treatments, it is AmSpa's recommendation that aesthetic practices adhere to these guidelines for the following medical aesthetic procedures.

- a) *Ablative lasers or ablative energy devices.* Ablative lasers are intended to excise or vaporize the outer layer of skin. These procedures should only be performed by a physician or delegated to an appropriately trained RN, NP or PA, with the physician directly supervising the procedure in the same room.
- b) *Non-ablative lasers, light treatments and energy device treatments.* Non-ablative treatments that do not excise or vaporize the outer layer of skin can be provided by

physicians, NPs and PAs. These procedures may be delegated to RNs and LPNs/LVNs under general supervision, provided a qualified RN or above (PA, NP or MD/DO) is on site. MAs may be delegated these treatments under the direct on-site supervision of a physician, NP or PA.

- c) *Microneedling*. Microneedling treatments, irrespective of depth, can be provided by physicians, NPs and PAs. RNs may be delegated these treatments under general supervision. LPNs/LVNs and MAs may be delegated these treatments under the direct on-site supervision of a physician, NP or PA.
- d) *Injection of fillers, neuromodulators or PDO threads*. Injectable treatments, such as fillers and neuromodulators, and the insertion of PDO threads, may be performed by physicians, NPs and PAs. These procedures may be delegated only to trained and qualified RNs acting under the general supervision of a physician, NP or PA.

Regardless of the level of skill or training, all non-physicians who perform aesthetic medical procedures must operate only under appropriate supervision and according to written protocols developed by the medical director. Any time a medical procedure is performed, an appropriately trained medical professional holding a license of an RN or above (NP, PA or MD/DO) must be on site to address complications and emergencies.

5.02 Licensed Medical Professionals.

Licensed medical professionals—such as NPs, PAs, RNs, LVNs and LPNs—must adhere to their professional scopes of practice and follow the direction of their respective licensing boards. In addition to acting within their statutory scope of practice, all licensed professionals must receive training for the specific services they are delegated, as defined in these guidelines. Except where specifically noted, these professionals perform their services under the delegated authority and supervision of the medical director.

5.03 Non-medical Professionals and MAs.

Medical spas may choose to employ other unlicensed, non-medical professionals to provide certain limited services. These unlicensed professionals are typically called medical assistants (MAs). MAs are unlicensed persons who have received training and instruction in certain health care services. MAs may be utilized in medical spas and may perform certain treatments as provided in these guidelines. Because MAs lack formal medical training, the tasks they may perform are restricted, and they must operate under a higher level of supervision than licensed medical professionals.

5.04 Laser Technicians.

The vast majority of states have not enacted any certification or licensure for operation of an aesthetic laser, light or energy-emitting device. Accordingly, in most states, the term “laser technician” is a misnomer and carries no formal meaning. In states that have not enacted any licensure or certification for these devices, laser technicians are defined as MAs specifically trained on certain laser, light or energy-emitting devices. Because they have received no formal medical training, they are subject to the same higher level of supervision as MAs.

Some states have enacted specific certifications for aesthetic laser treatments—usually, if not exclusively, laser hair removal. In these states, licensed or certified laser technicians may act only within the scope of the laser certification law of their state.

5.05 Estheticians and Cosmetologists.

Estheticians and cosmetologists may provide services in accordance with their statutory scope of practice and as permitted by their professional licensing boards. Some states expressly permit aestheticians to provide certain skin treatments that would otherwise be considered aesthetic medical procedures (“master aestheticians”). In these instances, these treatments may be provided in a medical spa with the approval of the medical director and in compliance with the respective state cosmetology board requirements. While estheticians and cosmetologists are restricted from performing any medical treatments, in some instances, they may be dually trained as MAs and may perform certain treatments under direct supervision. However, under no circumstances are estheticians or cosmetologists permitted to perform aesthetic injectable treatments such as fillers, neuromodulators, or the insertion of PDO threads.

5.06 Dentists.

Dentists who hold a traditional dental license (DDS) may practice within their statutory scope of practice and as permitted by their professional licensing boards. This may include cosmetic treatments and dentistry performed on the teeth, gums, oral cavity, lips and the area around the mouth. Treatments involving the rest of the face, head, neck or body are generally outside of their professional scope, even if they are otherwise skilled in the treatment.

Comment to Article 5: For the avoidance of any doubt, injectable treatments may only be performed by RNs, PAs, NPs and physicians, provided they are properly trained and qualified to perform those treatments. Aestheticians, MAs, LPNs, LVNs or other providers may not perform injectable treatments under any circumstances, regardless of any certification, training or direct supervision.

With respect to laser treatments or any light- or energy-emitting device, the goal is to ensure that a qualified, licensed medical provider is on site to address any complications or adverse reactions. Therefore, a physician (or NP/PA, where applicable) may delegate non-ablative energy treatments to unlicensed personnel, such as MAs, provided an RN or above is on site during the treatment.

Many states have adopted licensing laws that allow people to perform laser hair removal or other limited laser or light procedures under specific circumstances. These licensed laser practitioners may perform only the procedures allowed in their statutory scope of practice, and under conditions and supervision as required by their license. For other medical aesthetic treatments outside their scope of practice, they would be treated as MAs.

Article VI

Ownership and Compensation

6.01 Ownership and Compensation.

Most states—but not all—observe some version of the Corporate Practice of Medicine (CPOM), which restricts ownership of medical practices to physicians. As medical practices, all medical spas and medical aesthetic practices must adhere to ownership rules in their respective states, including strict adherence to the CPOM, if applicable. Similarly, medical aesthetic practices must adhere to those state laws that prohibit paying commissions for medical treatments, have fee-splitting prohibitions or have specific anti-kickback regulations. Regardless of the state ownership and compensation requirements, the following standards shall be followed by all medical aesthetic practices:

- a) A physician (or NP/PA, where applicable) must be in charge of all medical treatments, including developing protocols and ensuring that all examination, delegation and supervision requirements are followed; and
- b) The medical aesthetic practice in general, and the supervising physician specifically, must ensure that all medical treatments are provided within the prevailing standard of care and for the health and well-being of the patient.

6.02 Independent Practice of NPs and PAs.

Many states have adopted independent practice for NPs, and legislation has been introduced in some states proposing independent practice for PAs. Each state's laws and regulatory boards for these professions govern the scope of practice and ability to delegate procedures to others. These licensed independent practitioners can serve as medical directors and owners under these guidelines, subject to the restrictions their state places on their scope of practice, ownership of professional entities or authority to delegate medical spa procedures.

Comment to Article 6: The CPOM is alive and well in the United States. Since medical spas are medical practices, they need to be owned in accordance with their state's laws on medical practices. This will mean that in states that observe the CPOM, a licensed physician or group of physicians will need to own the medical spa. They may be able to jointly own with other health professionals or other persons, depending on state rules. In states that allow for non-physician ownership of medical practices, every medical spa must have a licensed physician as a medical director. The physician medical director must be able to independently exercise his or her professional judgment without influence or restriction. This extends to all aspects of the medical treatment process, including hiring and firing medical employees, choosing equipment and devices, setting hours and prices, and developing training and protocols for the medical spa. Regardless of how the medical spa is owned, the licensed physician is the person ultimately responsible for the safe and effective provision of all medical procedures at the medical spa. While ownership can take many forms, it is important that it adhere to local requirements.

The purpose of 6.01(b) is to ensure that, regardless of the flow of funds, revenue, and how providers are compensated (or how much they are compensated), a physician is in charge of medical treatment. Devices, types of treatments, hiring of providers, protocols and SOPs, safety measures, pre-qualification, disqualification—all these medical decisions must be under a physician's purview. The purpose here is to ensure that patient care drives corporate revenue, not the other way around. The business metrics—revenue per treatment, margin per treatment, etc.—that are often influenced by non-physicians must not be allowed to dictate the level or quality of patient care. Physicians practice medicine for the benefit of the patient, and ownership and compensation structures should not change that.

Article VII

Advertising, Marketing and Social Media

7.01 Use of Advertising, Marketing and Social Media.

As with all medical practices, medical spas and aesthetic practices must conform to state and medical board advertising rules. At a minimum, this will mean that all media, marketing and advertising used by the medical spa must not be deceptive, false or misleading. Practitioner and provider qualifications, credentials and experience should be accurately and clearly stated. Claims and statements regarding treatments and procedures should accurately and honestly reflect the outcomes and benefits of the procedures, and not make unfounded claims as to efficacy.

7.02 Use of Photographs.

Pictures used should accurately reflect expected outcomes and should acknowledge time and treatment duration. Model or non-patient photos should be clearly identified as such to avoid misleading potential patients. Use of patient photos should only be with the express written permission of the patient, in full compliance with federal and state privacy laws, and take all reasonable steps to shield the patient's identity.

7.03 Interactions in Social Media.

Posts and interactions in social media must preserve and protect patient confidentiality and HIPAA protections. Use of patient photos should only be with the express written permission of the patient, in full compliance with federal and state privacy laws, and take all reasonable steps to shield the patient's identity.

Comment to Article 7: Practitioners must be careful when using advertisements and patient testimonials, particularly on social media. As has been established throughout these guidelines, medical spas are medical practices. As such, they are subject to the same state and federal laws regarding public statements and patient privacy as any medical practice. Any advertisement or public statement must be accurate, truthful, and free from exaggeration, overstatement, and misrepresentation. Statements on websites, including testimonials from patients, must be objectively provable as accurate and true. This applies to all public-facing content, including patient photos on social media and on practice websites.

Additionally, guarding patient privacy and obtaining patient consent for photography is crucial. State-level patient privacy laws apply to medical spas, and the stringent provisions outlined in HIPAA have become the standard of care for many state medical boards. All advertising, marketing, and other public statements should be carefully reviewed by knowledgeable legal counsel.