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Reading Between the (Fine) Lines: Navigating the Med Spa Landscape

Consumer demand for appearance enhancing services continues to catalyze growth for the medical spa (med spa) industry. This expansion presents opportunities for investors and practitioners alike.

Appearance-enhancing services encompass a broad spectrum of treatments, ranging from non-invasive services, such as standard facials and eyelash extensions, which can be provided under a cosmetology license, to medical procedures, such as neuromodulator injections (e.g., Botox) and intravenous (IV) therapies, which must be provided under a health care professional license.

While the proliferation of med spas offers consumers convenient access to aesthetic services, it has also prompted regulators to scrutinize the blurring line between standard cosmetology services and the practice of medicine. Recent activity in New York highlights the state as one of the more prescriptive jurisdictions, and the state's findings may serve as a blueprint for sustainable operations.

New York Enforcement Actions

New York regulators recently concluded a joint enforcement operation that underscores the risks non-compliant med spas face.

In a **wide-ranging probe**, the New York State Department of State (DOS) inspected 223 businesses. Of those inspected, the state cited 87 for possible violations concerning the unlawful practice of medicine.

These enforcement actions have resulted in disciplinary proceedings, monetary fines, and license revocations.

In addition to this review, between June and September 2024, the New York City Council's Oversight and Investigations Division coordinated inspections of 15 med spas across the city in partnership with the New York State Department of Health (DOH) and DOS.

Investigators **documented** violations at all of the locations they inspected. Specifically, the report indicates that investigators found that every business inspected offered medical procedures – such as neuromodulator injections (e.g., Botox) or and IV therapies – without the required licensure and medical oversight. Furthermore, 26% of these businesses relied on unlicensed practitioners or practitioners with expired licenses to perform these services, according to the state.

New York's enforcement actions are notable for their scope, but the underlying regulatory concerns may prove applicable nationally. The New York investigation highlighted health risks, including the use of suspected counterfeit products, improper storage of hazardous materials, and sanitation failures. In some instances, consumers reportedly suffered severe injuries, including infections and sepsis, after undergoing procedures that unlicensed professionals performed.

Rather than serving as a deterrent, these enforcement actions may offer a roadmap for compliance. They illustrate that the primary risks stem from operating without a precise understanding of the regulatory environment. For operators, this reinforces that establishing a compliant infrastructure is key to operating in this evolving market.

Legal Considerations for Owners and Investors

Entrepreneurs, investors, and health care providers looking to enter or expand within the med spa space should consider the following actions as they work to set up compliant operations:

- **Corporate Practice of Medicine:** Many states, including New York, prohibit corporations owned by non-physicians from practicing medicine. In these jurisdictions, a med spa offering medical services generally must be licensed as a medical practice and owned by a licensed physician or organized as a professional corporation (PC) or professional limited liability company (PLLC). Non-physician investors often use a management services organization model to handle administrative functions, but the clinical entity must remain under physician control. Regulators are increasingly scrutinizing these structures to ensure they do not give non-physicians control over clinical judgment.
- **Aesthetic Services and Scope of Practice:** New York regulators are progressively drawing a distinction between appearance enhancement services (e.g., facials, waxing) and medical procedures. For example, state regulators recently noted that New York classifies procedures like Botox, dermal fillers, microneedling, and IV infusions as medical procedures. In line with that designation, licensed medical professionals within their scope of practice must perform these procedures.
- **Advertising:** The approach a business takes to marketing itself may trigger regulatory action. In the rush to enter a booming market, operators may inadvertently run afoul of medical advertising laws. In New York, DOH and the State Education Department (SED) closely regulate how licensed health care professionals may hold themselves out to the public and market their services. For example, state guidance indicates that, even if a provider is properly organized as a PC or PLLC, they generally cannot use the word “spa” in their name, as this may mislead the public regarding the nature of the facility. Additionally, DOH And SED have recommended that spas post clear signage informing consumers which services a facility is not licensed to provide. Companies and their marketers may wish to review

their social media pages to ensure that marketing accurately reflects the facility's medical supervision and professional entity status.

Conclusion

The med spa industry may offer opportunities for stakeholders. Simultaneously, the regulatory environment is evolving, and regulators are becoming more sophisticated in distinguishing between cosmetic services and medical practice. As some states move to standardize med spa services, operators are likely to experience increased scrutiny of corporate structures, scope of practice, and marketing representations. Proactively establishing a compliant infrastructure may help operators mitigate risks and position themselves for long-term success.

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