Medical Spa Directors

Don't Relax Your Legal Responsibilities

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Some advances in medical technology have helped us to live longer; others have (arguably) made us better looking.

Cosmetic surgical enhancements have been around for decades. In the past, the procedure and anesthesia involved in cosmetic surgery guaranteed these esthetic enhancements were only within the purview of physicians working in clinical settings. The advent of new, easy-to-use, and less-invasive devices has altered this field. Today, some licensed estheticians can effectuate the physical changes that once required a scalpel. The business world was quick to make use of these developments, and "medical spas" now dot our landscape.

A medical spa is what its name implies: a realm where medicine and esthetics intertwine. Traditionally, a day at the spa might include a facial, a waxing, or a manicure. Today, those seeking to enhance their appearance can go to a medical spa and receive vein therapy, skin tightening, permanent hair removal, Botox injections, chemical peels, and microdermabrasion. Some of the procedures available at such spas involve the use of medical lasers.

In this article, we address laser hair removal in order to highlight issues relevant to physicians considering a relationship with a medical spa. We identify the risks of laser hair removal and the regulations pertaining to such treatment, particularly regarding physician delegation of treatment to non-physician, licensed professionals.

OVER THE LAST FOUR DECADES, laser and intense pulsed light sources have gained tremendous popularity in epilation therapy treatments. Under Washington State law, hair removal and other dermatological treatment using laser, light, radiofrequency, and plasma (LLRP) devices constitute the practice of medicine because an LLRP device penetrates and alters human skin.[1]

Medical spas need physicians to serve as medical directors. To some physicians, especially those first starting out and those approaching retirement, associating with a medical spa may appear to be an attractive and easy option to increase monthly income. Unfortunately, such appearance masks a more onerous reality. There are health risks associated with the use of LLRP devices. Washington State law holds physicians—including those serving as medical directors of LLRP device treatment facilities—ultimately responsible for all treatment considerations and more, ranging from appropriate pre-treatment procedures to post-treatment care and follow-up.[2] Unfortunately, the Medical Quality Assurance Commission (MQAC) has found it necessary to remind some physicians of these legal obligations.

Laser hair removal takes advantage of the absorptive characteristics of pigment coupled with a specific wavelength of light corresponding to the intensity of the pigment to selectively destroy the targeted pigment. For laser hair removal to be effective, there is a requisite for contrast between the targeted hair pigment and the surrounding melanin in dermal tissue. Melanin pigments in the epidermis and tissue surrounding the bulb of the hair follicle can render the specification of wavelengths imperfect and result in decreased efficacy and potential negative or adverse reactions. The more pigmented the skin type, the higher chance for adverse reactions (Naief, 344). The dissipation of heat to the surrounding tissue is the major concern for adverse reactions such as burns, scarring, and pigment changes, however, the use of pulse durations that are longer than the thermal relaxation time of the hair bulb, coupled with proper cooling techniques between pulses, can produce effective and safe results (Tanzi, 10).

A recent review of complications in LLRP devices reports that "pulsed and Q switched laser systems adhere the most closely to the principles of selective photothermolysis. The use of these devices coupled with proper application of cooling agents before and immediately between passes results in the highest degree of selective destruction with the lowest risk of scarring from excessive thermal diffusion" (Naief, 340). However, even with this highly selective technology, unwanted adverse reactions can result from mechanical malfunction of the equipment, poor application of technique by the operator, or lack of compliance with post-procedural care instructions. Less obvious reactions involving poor eye protection, reticulate erythema, and paradoxical excessive hair growth can also occur and need to be discussed prior to treatment.

Moreover, while laser hair removal is highly sought after given the reduced frequency of treatments to remove unwanted hair

1. WAC 246-919-605(2).
2. WAC 246-919-605(4)-(8); Dept. of Health, Med. Quality Assurance Comm., Interpretive Statement, Jan. 9, 2015, at 2.

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compared to shaving and waxing, complete and permanent removal of hair is uncommon. Laser hair removal requires maintenance treatments even after desired results have been attained. This is because this method of hair removal is most effective in the anagen phase of growth of hair follicles, and also because adjacent hairs are in different stages of the growth cycle at any given point in time. The best results that can be obtained with photo-epilation consist of lighter, less, and thinner hair and a general expectation for less and less hair with repeated treatment cycles. Ideally, six treatment cycles spaced six weeks apart produces the best results and can result in partial long-term hair removal lasting beyond six months post-treatment (Haedersdal, 18).

In addition to being ultimately responsible for the use of LLRP devices, physicians must also implement and maintain a quality assurance program at the medical spa to ensure proper client/patient care.[3]

For example, limitation of sun exposure is highly recommended in addition to use of sunscreen with SPF 30 or greater for at least two weeks prior to and following the laser hair removal procedure. Likewise, treatment of the epidermis with four percent hydroquinone cream can be helpful. Use of protective eye goggles, application of cooling techniques, and prompt evaluation of adverse reactions is essential in thwarting long-term complications. Even the most computerized LLRP devices are not without flaws and need regularly scheduled calibration, troubleshooting, and maintenance to prevent mechanical malfunction. A detailed review of medical history as well as a review of post-procedural precautions and recommendations is essential in avoiding and reducing possible adverse reactions. Realistic expectations of attainable results and the potential risks should be discussed with candidates prior to initiation of treatment.

Physicians may delegate LLRP device treatment to properly trained and licensed professionals whose licensure and scope of practice allow the use of an LLRP device.[4] Certain conditions must be met:

- A physician must create a written office protocol for the supervised

3. WAC 246-919-605(9).
4. WAC 246-919-605(10).

professional to follow in using the LLRP device, and the physician must ensure that the supervised professional uses the device only in accordance with the written office protocol.[5]

- The supervised professional must not exercise independent medical judgment when using the device.[6]

In light of these supervisory responsibilities, the delegating physician must be present on the immediate premises and able to treat complications, provide consultations, or resolve problems that may arise while any patient receives LLRP device treatment.[7] MQAC adopted this regulation to address concerns that unlicensed or inadequately trained persons were using LLRP devices with little or no supervision and consequently putting patients/clients at unreasonable risk of harm.[8] An exception exists if the physician is called away to attend an emergency.[9] A physician may only be temporarily absent from the LLRP device treatment facility, and a local back-up physician must be available when the delegating physician is temporarily absent.[10]

The MQAC defines "temporary" absence as "brief, intermittent, or [for] limited periods of time."[11] An ongoing arrangement in which the delegating physician is primarily absent from the LLRP device treatment facility for extended periods of time and provides remote supervision of professionals and patients undermines Washington State law and is contrary to MQAC guidance.[12] Physicians serving as medical directors of LLRP device treatment facilities must spend the majority of their time on-site rather than returning to their own separate practices.[13] These requirements indicate that a physician's association with a medical spa may not be as easy and relaxing as a trip to the salon.

Laser hair removal is a complex science that demands careful and proper operator technique and in-depth understanding of specific devices. The same can be said of other LLRP device treatments provided at medical spas. With patient safety as a primary concern, physicians and medical spa directors must ensure proper in-person supervision of all medical treatments performed on patients. Although medical spas may present an indulgent and relaxing atmosphere for clients, the physicians who work there must regard those clients as patients, with attendant professional and ethical obligations. ■

Note: This article does not constitute a legal opinion nor is it a substitute for legal advice. Legal inquiries about topics covered in this article should be directed to your attorney.

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5. WAC 246-919-605(10)(d)-(f).
6. WAC 246-919-605(10)(f).
7. WAC 246-919-605(10)(g).
8. Dept. of Health, Med. Quality Assurance Comm., Interpretive Statement, Jan. 9, 2015, at 1-2.
9. WAC 246-919-605(10)(g).
10. WAC 246-919-605(10)(h).
11. Dept. of Health, Med. Quality Assurance Comm., Interpretive Statement, Jan. 9, 2015, at 2.
12. *Id.*
13. *Id.*