

Title: Medical spa practice

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Purpose: Provide guidance on medical spa practice in New Mexico

Approved by: NMMB Chair, Executive Director, Medical Director

Background:

The New Mexico Medical Board regularly receives inquiries concerning medical spa practices, especially what procedures can non-medically licensed individuals do or not do. Most of the questions we receive appear to come from licensed cosmetologists and aestheticians.

The current regulations do not specifically delineate the operation of medical spas per se but they do define the practice of medicine regarding cosmetic procedures, as well as the use of medical assistants. See NMAC 16.10.13 for the rules.

Definition of Medical Aesthetic (Spa) Procedures:

Medical spa services are defined by the American Spa Association as “aesthetic medical procedures meant to enhance a patient’s appearance or improve health and wellness.” These procedures may be differentiated from those typically provided by a plastic surgeon as they tend to be significantly less invasive.

What makes any procedure “medical” and considered to be the practice of medicine is when it affects living tissue: they alter or destroy the living tissue of a patient, and so require specific skills and licenses to be performed safely and mitigate risks of harm.

The best way to determine if a procedure is medical is to apply the “living tissue” assessment.

Non-medical services, as offered by licensed cosmetologists and aestheticians, affect only the non-living surface of the skin. Their scope, as defined by their board, does not permit performing medical spa procedures (as defined below) under their licensure. However, they may be able to perform some medical spa procedures, irrespective of their licensure, as medical assistants if they are compliant with our regulations.

Licensed Cosmetologists and Aestheticians and Med Spas:

Licensed cosmetologists and aestheticians are frequently employed in medical spas where they can offer services as defined by their regulatory board (NMAC 16.34.5). If they wish to perform certain medical procedures not described in their regulations, they are then acting as (unlicensed) medical assistants and fall under the medical board's purview and regulations.

Delegating Performance of Medical Procedures to Non-medically Licensed Individuals:

Concerning non-licensed medical assistants performing medical procedures, the NMMB regulations are summarized as follows:

A medical therapeutic or medical procedure, device, or treatment includes a regimen that alters or damages living tissue to improve the patient's appearance. The regulations specifically define:

- Injection or insertion of a biologic or synthetic substance
- Application of a chemical substance
- Application of microwave energy
- Application of an FDA-approved wave-form energy, including but not limited to lasers or intense pulsed light

Medical assistants can only perform procedures that are "non-incisive and non-ablative", so for example they cannot inject into living tissue nor use procedures that destroy tissue. Medical assistants can perform other procedures but must be trained in the procedure (as defined in the regulations) and be under the supervision of a physician (note independently licensed nurse practitioners may also qualify as supervisors, please review the NM Board of Nursing rules). The supervising physician remains responsible for the care provided by a medical assistant.

Incisive and ablative procedures can be performed by licensed medical providers under independently licensed provider supervision, as allowed by the NMMB and NM BON regulations.

Responsibilities of the Supervising Physician:

As these are medical procedures, physicians have responsibilities for providing care that are the same as in any medical setting. The physician must be trained and competent in the procedures being offered. As identified in the regulations, physicians must:

- Perform a patient history, relevant physical exam, make a diagnosis, create and follow treatment protocol and provide follow-up care.

- Review adverse outcomes or changes to protocols.
- Inform patients of the role of staff involved in the procedure.
- Provide patients with information on emergencies and follow-up care.
- Be physically present and available when procedures are being performed, and patients and the public must be informed of who the supervising physician is.
- Provide written protocol for medical assistants to follow as medical assistants are not qualified to use medical judgement.
- Assure compliance with training and reporting requirements.
- Are ultimately responsible for patient safety.

As noted elsewhere in the regulations, a medical record must also be created.

A supervising physician's responsibility is to ensure medical assistants and nurses (RN and LPN) are properly trained for the procedure they are performing, are awarded a certificate that documents that training, and that the certificate is provided to the medical board.

Finally, note that the NM Board of Nursing will have jurisdiction over licensed nurses performing these procedures and their regulations should be consulted.

Physician Assistants and Medical Spas:

Medical spa practice is not primary care, so any PA (collaborative or supervised) will require a supervising physician who is trained and experienced in the medical spa procedures being performed. Supervised PA's can then serve as medical directors for medical spas, under the supervision of a physician that they can easily reach as per our PA regulations. PAs may delegate aspects of medical spa procedures to nurses or medical assistants that are properly trained for the task. The physician need not be on site.