

Can a Physician Assistant (PA) Set Up a California Medical Spa?

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By Michael H. Cohen

In today's video, we turn to the question of whether a physician assistant (PA) can set up a California medical spa, or an integrative medicine, functional medicine, or any other multidisciplinary wellness center.

Hi, I'm Michael H. Cohen, founding attorney of Cohen Healthcare Law Group. We help healthcare industry clients like you, navigate the complex terrain of healthcare and FDA law so you can grow, launch, scale, your healthcare business.

Here's a familiar medical spa scenario. Paul, a Physician Assistant, excels at marketing and getting patients. He wants to set up a medical spa. He wants to hire an exercise physiologist, a registered nurse, personal trainer, a bunch of other practitioners. Can he do it?

First, as we know the Corporate Practice of Medicine prohibits the practice of medicine by an unlicensed person or corporation. So, Paul should look for an MD or DO, who can bring a professional medical corporation to the table to run the medical side of the spa.

The physician should supervise all the services to be offered by the medical spa, all the clinical services. In California, either the MD or DO, PA under the physician's supervision, or the NP in a collaboration agreement with the physician, can perform that initial, good-faith exam. The physician should have standardized procedures for each medical procedure, and properly supervise the PA and registered nurse. The physician should also be responsible for hiring and firing these clinical providers within their professional medical corporation.

Exercise physiology, personal training, those are independent. They could even be hired by the MSO that manages and markets the branded medical spa.

Paul, the PA, can potentially have several streams of income. First, he has his own professional practice under supervision of the MD. Second, he might be a shareholder in the professional medical corporation, if the MD agrees. And third, he might be full or part-time owner in the MSO.

All the marketing materials, including the website, should identify who does what services and what are the licensure and credentials for so performing these services. The marketing materials should be reviewed by legal counsel to ensure that there are not red flags for enforcement as being false and misleading advertising. We've seen a lot of stuff happen.

California now includes increased penalties for medical spa owners who violate the corporate practice of medicine and engage in unlicensed medical practice. The law targets many popular medical spas that provide non-surgical, cosmetic procedures out there today like laser skin resurfacing, dermal fillers, cellulite treatments and much more.

So, that's why it's important for Paul to have his business model vetted by healthcare counsel that understands the nuances of laws applicable to medical spas.

Corporate practice of medicine is just one area of risk though. As mentioned, the PA got to be supervised by the physician. According to the California regulatory boards the supervising physician oversees the activities of and accepts responsibility for the medical services rendered by the PA. The supervising physician must adhere to the following mechanisms to provide supervision. Adherence to adequate supervision as agreed to in a practice agreement that meets the requirements of Business and Professions Code section 3502.3. And the physician must be available by telephone or other electronic communication method at the time the PA examines the patient. The supervising physician does not have to be on-site but has to be available as indicated.

Before a PA can issue drug orders, the supervising physician must first prepare and adopt a written, practice specific formulary and protocols that specify all criteria for the use of a particular drug and any contraindications. The drugs listed constitute the formulary and can only include drugs that are appropriate for use in the practice. Any variations require advance approval from the supervising physician for the particular patient before the PA may issue a drug order.

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