# MedSpa: Physician Supervision of RNs—Do You Need It?

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## There can be a lot of confusion in the industry—and medical spa treatment by RNs under physician supervision is an enforcement hot bottom.

**How Much Treatment Can RNs Do in a Medical Spa?**

While every state is different, we'll start here with California.

The most helpful resources are The Medical Board of California (MBC), FAQs – Cosmetic Treatments, and MBC, The Bottom Line: The Business of Medicine—Medical Spas.

In Cosmetic Treatments, Question 1 says: "Physicians may use lasers or intense pulse light devices. In addition, physician assistants and registered nurses (not licensed vocational nurses) may perform these treatments under a physician's supervision. Unlicensed medical assistants, licensed vocational nurses, cosmetologists, electrologists, or estheticians may not legally perform these treatments under any circumstance, nor may registered nurses or physician assistants perform them independently, without supervision."

Question 2 says: "Physicians may inject Botox, or they may direct registered nurses, licensed vocational nurses, or physician assistants to perform the injection under their supervision. No unlicensed persons, such as medical assistants, may inject Botox."

As to fillers, MBC states in Bottom Line that "the use of prescriptive medical devices and injections for cosmetic reasons is the practice of medicine…. There is a tendency for the public, and some in the profession, to view laser treatments, Botox and cosmetic filler injections as cosmetic rather than medical treatments. The use of prescriptive drugs and devices, however, is the practice of medicine, and the same laws and regulations apply to these types of treatments as those driven by medical necessity. There are no separate laws governing these procedures, and physicians will be held to the same standard as they are for their routine medical practices."

Question 6 of Cosmetic Treatments addresses microdermabrasion—if "it's a medical treatment that penetrates to deeper levels of the epidermis," then it "must be performed by a physician, or by a registered nurse or physician assistant under supervision."

**Physician Supervision and Standardized Procedures for Nurses**

With respect to supervision, in Bottom Line MBC states: "While current law allows the delegation of laser treatments and injections to the above mentioned licensees, the law requires supervision by the physician. In the current environment, many have operated under the opinion that since the nursing regulations are broadly written, nurses may perform anything anywhere with essentially no supervision as long as there are "standardized procedures" or "delegation of services" documents on file.

MBC also states: "Standardized procedures for nurses allow nurses to perform procedures while the physician is not on-site; however, they do not absolve physicians of their supervision responsibilities. Nor does the law allow nurses to set up a practice in a salon, hire a physician supervisor, or perform medical procedures independently. The law does not contain a legal definition of supervision, and therefore, absent a legal definition, the plain English definition applies. "Supervision" is defined as the act of supervising, which is to oversee, to direct, to have charge, to inspect, to provide guidance and evaluation."

MBC provides the following example: "As an example, the regulations for "standardized procedures guidelines" require **physicians to be responsible for ensuring the experience, training, and education requirements for performance of the delegated function** – and this must be documented. The regulations require that a method of initial and continuing evaluation of the nurses' competence be established." (emphasis added)

Regarding your physical presence as the supervising physician, MBC in Bottom Line states: "When functioning under "standardized procedures," **physicians need not be present in the facility when the procedures are being performed.**

**The facility, however, must be a medical setting**. Regulations require that the location be an "**organized healthcare system**," which is **not a salon, spa, or other facility not under the control of the physician**." (emphasis added)

Thus, if you are in a setting other than your own office, you should rent at **fair market value** and have **exclusive control of the medical space** during the time you are using it.

As well: "The guidelines further require the standardized procedures to describe the circumstances under which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition. While there is no actual mileage limit relating to supervision, this requirement certainly means that the physician must be immediately reachable and able to provide guidance in the event of an emergency or the need for a higher level of care that must be provided by the physician. Physicians must be within a geographical distance that enables them to effectively provide supervision and support when needed or upon request."

16 CCR 1364.50 states: "Whenever an elective cosmetic procedure involving the use of a **laser or intense pulse light device** is performed by a licensed health care provider acting within the scope of his or her license, a physician with relevant training and expertise shall **be immediately available** to the provider. For the purposes of this section, "immediately available" means contactable by electronic or telephonic means without delay, interruptible, and able to furnish appropriate assistance and direction throughout the performance of the procedure and to inform the patient of provisions for post procedure care. Such provisions shall be contained in the licensed health care provider's standardized procedures or protocols." (emphasis added)

See also Board of Registered Nursing, Standardized Procedure Guidelines.

**The Good Faith Exam**

What is a good enough for a good faith exam in a medical spa or similar healthcare venture, and when do you need it?

MBC states in *Bottom Line*: "Further, it is the responsibility of the physician to examine the patient before delegating a task to a registered nurse." However, a nurse practitioner (NP) "may be delegated the task of providing the appropriate prior examination and ordering the drug or prescriptive device for the patient, if acting under standardized procedures."

MBC clarifies: "An appropriate prior examination is required where prescriptive drugs and devices will be used, and this examination may not be delegated to registered nurses. After performing the examination, the supervising physician may delegate a procedure that utilizes a prescriptive device to a nurse working under standardized procedures."

**Videoconference Exam**

Regarding the "appropriate prior examination," California law generally holds physicians to the same standard of care whether the patient encounter is in-person or via telehealth (e.g., videoconferencing), and requires informed consent, documentation in the medical record, compliance with privacy and security laws, and other adherence to law. (See Bus. & Prof. Code 2290.5; CMB, Practicing Medicine Through Telehealth Technology).

However, CMB indicates that an in-person examinations for prescribing will "not only enhance the opportunity to confirm if a patient needs the identified medication or to rule out other medical conditions, but ensures the patient is advised of alternative treatment options and is aware of potential side effects."

(See CMB, Internet Prescribing – Information for Physicians; FAQs – Internet Prescribing and Practicing; Internet Prescribing —Information for Consumers). Although Business & Professions Code section 2242.1 only speaks to "an appropriate prior examination and medical indication therefor," CMB has made its policy clear that the exam should be in-person, and "continues to investigate cases" that raise enforcement scrutiny. (Note 2242.1(a) states: "(a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242." 2242(b) has a limited 72-hour supply exception).

On its webpage describing telemedicine, the California Medical Board (CMB) appears to default to the standard of care as the test as to whether telemedicine is permissible; however, on its webpage concerning Internet prescribing, CMB states that the law prohibits prescribing, without an "appropriate prior examination," notwithstanding that standard of care may be satisfied or that it might be considered within the range of acceptable professional practice by peers not to have an in person exam (for example, in some tele-dermatology). On this page, CMB cites California Business & Professions Code, Section 2242.

Notably, as of October 11, 2019, the California legislature amended and liberalized Section 2242 via AB 1264, to provide that an appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, as specified, provided that the licensee complies with the appropriate standard of care. Thus, 2242 now provides:

"Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care."

Cal. Bus. And Professions Code § 2242.

Yet even so, there are also standard of care concerns, as noted in a 2019 disciplinary action by the Medical Board of California entitled, *In re Richard J. Holmes, M.D*

**Operating Your Medi-Spa in a Legally Compliant Way**

Healthcare compliance is complex and there are multiple elements to a good compliance programs.

Also, there are different kinds of healthcare ventures that require special attention to structure. For example, there are compliance similarities and differences between and among healthcare ventures such as:

- Medical spas
- Telemedicine, telepsychology, teledermatology, telehealth, telepsychiatry
- Mobile health and fitness apps or software with a health advice component
- Other online and mobile / virtual healthcare businesses

Here are some basics for the brick-and-mortar medical spa, at least in California:

1. Procedures: An aesthetic RN can inject Botox or fillers, or perform laser treatment or medical microdermabrasion under your medical supervision.
2. Standardized Procedures: You should have standardized procedures in place for the RNs. These standardized procedures should comply with all the requirements of California law.We noted above MBC's example of "ensuring the experience, training, and education requirements for the performance of the delegated function"—and documenting the same, as well as evaluating the RN's competence on an ongoing basis.
3. Supervision: Be sure the supervision is real and not token. As noted, MBC wants you "to oversee, to direct, to have charge, to inspect, to provide guidance and evaluation."MBC also wants you, the physician, to be "knowledgeable and competent in the procedure being delegated" and "capable of performing it." This does not require board certification to perform the cosmetic procedure, but it does require "sufficient knowledge and training in the procedures being performed."Further, you must be "immediately reachable to provide guidance in the event of an emergency or the need for a higher level of care that must be provided by the physician," and within a "geographical distance" that allows you to provide appropriate supervision and support upon request. If you are using an elective cosmetic procedure involving the

use of a laser or intense pulse light, you must be “immediately available” to the provider—which means “contactable by electronic or telephonic means without delay, interruptible, and able to furnish appropriate assistance and direction throughout the performance of the procedure and to inform the patient of provisions for post procedure care.” Further, you must place such provisions in the licensed health care provider’s standardized procedures or protocols.Your name (or that of your professional medical corporation), not the RN’s, must show in advertisements about the treatments.

4. No “medical director”: You should not be “medical director” for the medi-spa (see Q4 of Cosmetic Treatments) but should operate under your medical practice or professional medical corporation.
5. Control of medical space: As noted above, if you are in a setting other than your own office, you should rent at fair market value and have exclusive control of the medical space during the time you are using it.
6. Appropriate prior examination: An RN may not be delegated the appropriate prior examination. A nurse practitioner (NP) may be delegated the task of providing the appropriate prior examination and ordering the drug or prescriptive device for the patient, if acting under standardized procedures.Videoconference: Regarding the “appropriate prior examination,” California law generally holds physicians to the same standard of care whether the patient encounter is in-person or via telehealth. We recommend that physician see the patient in-person prior to prescribing. Among other things, CMB will want to be sure that there was a valid medical indication for the prescription, and the in-person exam can potentially bolster the record of such. We can discuss the nuances with you if you would like.
7. Some Additional compliance points—record, documentation, standard of care, informed consent: As we discussed, the patients belong to you and are your responsibility as the physician. You are held to the standard of care and have to follow all the usual legal and regulatory requirements such as, for example, a robust informed consent process and documentation (see CMB, Medical Spas—What You Need to Know).