

MSO Ownership issues for Medical Spas

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There are a number of compliance issues involved with running a medical spa. These issues often overlap. Our experienced healthcare compliance lawyers can help you sort out these issues which include:

- What is a Medical Spa?
- What entity should a medspa use?
- What do medical professionals need to understand about owning and operating a medical spa?
 - Medical spas and the practice of medicine
 - Medical spa compliance requirements
- Who can own a medical spa?
- What is the role of an MSO in a Medical Spa?
- Additional benefits of using an MSO for a medical spa

Some of these issues we've discussed already (just follow the red links).

What is a Medical Spa?

According to the American Med Spa Association, a “medical spa” (also called a medspa, a med spa, and a Medi Spa) is a:

*“Branded term for a **medical practice** where a patient can go for a variety of cosmetic and (typically) non-invasive procedures, ranging from Botox to chemical peels and laser treatments.”*

Investors and owners of medspas need to review the legal compliance issues that medspas must follow based on their type of practice, the state where the medspa is located, and other factors. Health businesses such as health and wellness centers and IV hydration centers should understand their comparable regulatory compliance issues.

What entity should a Medical Spa use?

At Cohen Healthcare Law Group, “owning” a healthcare venture usually involves two business entities:

- A PC (professional corporation) or PLLC (Professional limited liability corporation)

- A second company (an MSO) that owns the management and marketing team. An MSO is usually either an S-corporation (for a small number of owners) or an LLC

The three legs of a medical practice are:

- Generally, the medical staff (doctors, physician assistants, and nurses) work for the PC or LLC.
- Generally, the bookkeepers, accountants, marketers, schedulers, and phone staff are hired by the MSO.
- A contract between the PC/LLC and the MSO explains the services the MSO will provide – at fair market value – to the healthcare entity.

WHAT ENTITY SHOULD I USE FOR MY MEDSPA?

Many medical spa, IV hydration, and health and wellness center clients call us with this question: can you help us with “entity formation”? Which entity should I use?

What do medical professionals need to understand about owning and operating a medical spa?

Medical spas and the practice of medicine

Medspa businesses need to understand which of the services the medspas provide are “medical.” In most states, many more services are considered medical than an investor or owner might think. Examples include any diagnosis, treatment, or operation of a patient. Any prescription for any human disease, injury, pain, deformity, or other physical or mental condition of someone is considered as the practice of medicine in most states.

Many “cosmetic” treatments are “medical treatments.”

Each state has specific qualifications for who can perform medical services on a patient and to whom that healthcare provider can delegate the specific services— provided the delegation is in the appropriate scope of practice.

Medical spa compliance requirements

Owners of medical spas should consult with experienced healthcare lawyers to understand their legal requirements. Each state has different requirements. One common requirement is called “the corporate practice of medicine (CPOM).

“This state law requirement is enacted to ensure that ‘only licensed physicians or entities wholly owned by licensed physicians practice medicine, thus limiting the commercialization of medicine by non-physicians.’”

Generally, licensed MDs and DOs can own and operate a medspa in every state.

Who can own a medical spa?

Some states permit a licensed physician to partner with nurse practitioners (NPs), physician assistants (PAs), or registered nurses – to open a medspa. There are often limitations. California’s CPOM law requires that at least 51% must be owned by the licensed physicians.

Non-physicians can have an interest in a medspa through an MSO. The MSO’s purpose is to provide different types of support (management, marketing, technical, and administrative) to other businesses such as medical practices. The core idea to keep in mind is that the medical practice and the MSO work together so that the medical practice can focus on providing the best medical care possible to the practice’s patients while the MSO manages the business side of the practice.

In this way:

- The physicians are providing care based on the patient's best needs and the financial needs of the patient. The medical practice keeps its responsibility to house the medical equipment and hire the medical staff.
- The MSO is providing the best care for the business side of the practice while ensuring that the MSO does not interfere with medical/clinical decisions.

The MSO agreement (also called a management services agreement – MSA) helps establish these parameters.

- The MSO receives a fair market value fee and has no investment in the profits of the business. The MSO will also provide the terms for any leasing arrangements. Often, for example, the MSO will purchase office space and medical equipment that the MSO leases to the medical practice. Leasing is just one of the one the use of an MSO can help the medical practice comply with Stark Law and the Anti-Kickback Statute (AKS).
- The owners of the medspa determine the salaries and profit shares for each owner through their corporate bylaws, partnership agreements, or other legal methods.

One related issues, we're often asked about regarding the structure of a medical spa is: Can non-physicians hire a medical doctor for their medical spa? As we've discussed:

- Medical practices such as medspas should avoid using the term "medical director." Medical physicians direct clinics, not business ventures.
- The MSO should not make flat-fee payments to a medical director because that could violate Stark Law and the federal and state anti-kickback laws.
- Only doctors can own a majority stake in the medical spa. Licensed nurses and other designated clinicians can own up to 49% of the medical spa. Anyone (a doctor, clinician, or layperson) can own any percentage or even 100% of an MSO.

DO YOU KNOW THE KEY DIFFERENCES BETWEEN THE 4 AMBULATORY SAFE-HARBORS TO THE FEDERAL ANTI-KICKBACK STATUTE (AKS)?

There are four types of ambulatory safe harbors in the federal Anti-Kickback Statute. We explain the key differences between the ambulatory safe harbors to the federal anti-kickback statute (AKS)

CAN YOU GET A MEDICAL DOCTOR OR MEDICAL DIRECTOR FOR YOUR MEDSPA?

We're awash—pardon the pun—in medical spas, IV hydration centers, nurses opening healthcare practices, multidisciplinary centers, and health and wellness groups of all types. This stuff is [...]

Additional benefits of using an MSO for a medical spa

An MSO can help a medical spa in many ways including:

- **Helping the medspa comply with various federal and state regulatory compliance requirements** such as the three we discussed above – The corporate practice of medicine, Stark Law, and the AKS. ***You should always start with a legal review of your healthcare compliance issue.*** An experienced MSO can help create and enforce procedures such as keeping accurate records, implementing HIPAA compliance, and many other compliance laws and regulations.
- **Handling the administrative work.** An MSO can help a medical spa by managing payroll, managing human resources (provided medical decisions are left to the clinical side of the practice), and implementing a scheduling system.
- **Handling the medical coding and billing.** MSOs can help medical spas by setting up an invoicing system, assigning the

proper insurance codes so the insurance carriers will pay the medspa's claims, and working to collect the payments for the medspa service from the insurance companies and whatever sums the patient owes.

- **Providing the technological support the medical practice needs.** This support includes such software as practice management software, electronic health records (EHR) systems, and software tools to increase the productivity of the medical practice.
- **Providing financial support.** An MSO for a medical spa can provide billing management, regular financial reports, and handle the contracts with insurance companies.
- **Obtaining and leasing office space.** An MSO can help a medical spa find office space, negotiate the lease, and manage the office. As we mentioned above, the MSO can even buy the office space and lease the space to the medical practice. Leasing office space, if properly done, is considered an exception/safe harbor under the Stark Law and AKS statutes.
- **Training the staff.** While MSOs cannot provide any clinical training, MSOs can ensure that the medical staff understands their compliance requirements as reviewed with legal counsel.
- **Helping with the hiring of administrative staff.** MSOs can decide who to hire provided the people being hired are not working for the clinical side of the medical practice.
- **Helping with healthcare professionals' credentials.** While an MSO for a medical spa can't decide which healthcare professionals to hire, the medspa can review a healthcare professional's credentials. Our healthcare professionals will help your medical practice determine which personnel are considered healthcare professionals and what their medical license and certification requirements are.
- **Purchasing equipment, supplies, and medications.** An MSO can't make decisions about the medical quality of medical product purchases but the MSO can purchase specific medical products for the medical spa. We'll review your medspa's Stark Law and AKS compliance issues and how an MSO can help.
- Helping a medspa practice in differing locations.

Healthcare providers and non-healthcare providers who wish to operate a medical spa need to understand the laws in their state that determine who can own a medical spa and who can manage a medical spa. Once there is a determination about who the owners should be, legal decisions need to be made regarding the business structure of the medical spa. Generally, an MSO is a preferred choice for helping to separate the medical side of the practice from the business side of the practice to ensure patient care comes first.

Doctors, nurses, investors, and anyone interested in owning or running a medical spa should [contact](#) Cohen Healthcare Law Group, PC to discuss their legal and healthcare compliance requirements. Our [experienced healthcare attorneys](#) advise medical practices about how to address healthcare compliance laws and regulations issues, protect patients, and financially support the owners and members of the medical spa.

[Contact](#) our [healthcare law](#) and [FDA attorneys](#) for legal advice relevant to your healthcare venture.