Physician Supervision

Supervision of off-site employees who perform medical procedures can be legally problematic for physicians.

In a prior issue we discussed regulations related to physician delegation of medical treatment. In this column, we will be looking at physician supervision of non-employee staff members. Supervision is potentially more problematic for physicians than delegation. There is long-standing regulatory guidance and acceptance of a physician's ability to delegate care. In these situations, the physician is medically and legally responsible for the delegated aesthetic medical procedure and the care of the patient.

> A physician is permitted to supervise ancillary medical staff only to the extent of their residency or fellowship training.

However, there is no such basis in law for many physician supervision scenarios in aesthetic medicine. These include: a physician who supervises the employees of a facility that the physician does not own or control; and a physician who supervises staff members at a satellite office that he owns but seldom visits. Supervision is more problematic than delegation, because the physician typically does not have a high level of knowledge regarding the individual staff member's skills and abilities.

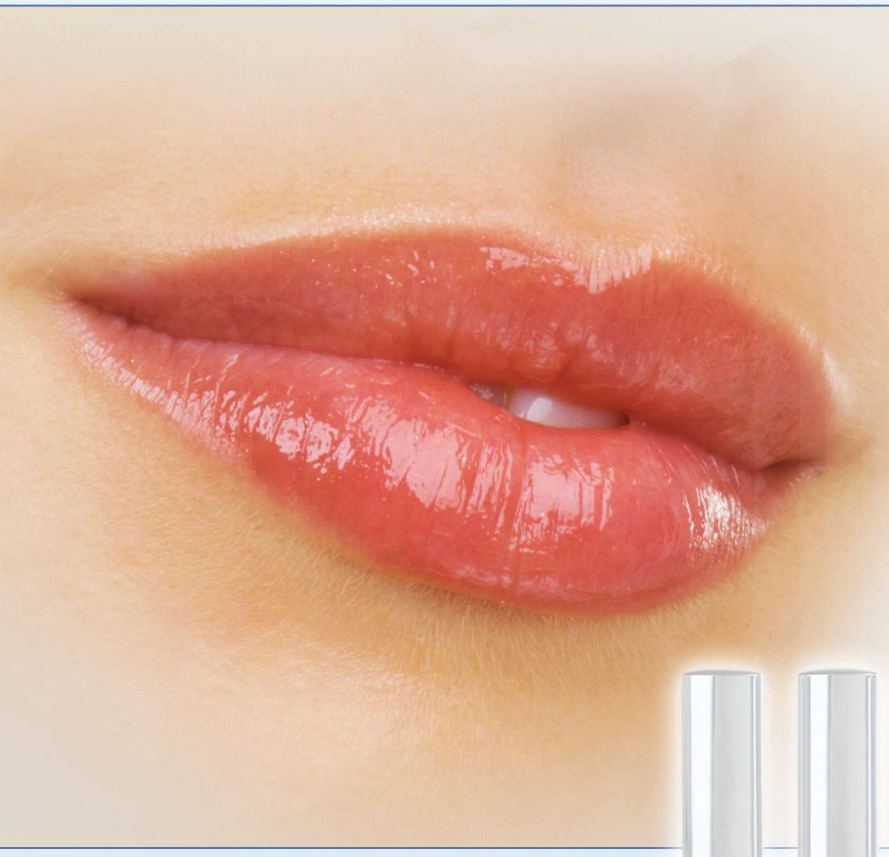
Supervising Personnel at a Satellite Office

Many aesthetic practitioners supervise ancillary medical providers within the doctor's practice. This is a common occurrence, and the legal basis for it revolves around the physician's knowledge of the employee's skill level and certification as well as the creation of protocols and procedures developed by the physician for the delegated staff member.

The legal basis for the supervision of ancillary medical personnel at a separate facility that is owned by the supervising physician is based in state supervision guidelines. Generally, a physician is permitted to supervise ancillary medical staff only to the extent of their residency or fellowship training. This concept can become problematic in the modern medical aesthetic practice as we will see.

Legal standards that exist in all 50 states dictate that supervision of ancillary medical personnel in cosmetic or aesthetic practices *should* be performed by a core physician (i.e., dermatologists, plastic surgeons or facial plastic surgeons). The reason for this is that the vast majority of efficacious medical cosmetic procedures—including lasers, fillers, neurotoxins and other energy-based devices—are

A **New** Gold Standard in Lip Enhancement



Volume & Color

Lip Enhancer

Plumps lips in minutes with results that last for hours

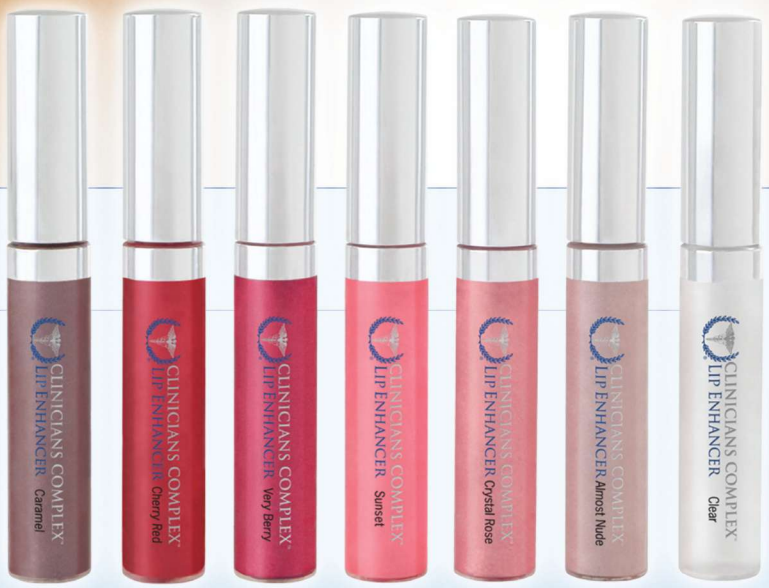
Formulated with a vaso dilator to increase blood flow

Contains peptides that stimulate collagen and hyaluronic acid production for long-term lip plumping

Available in Clear Gloss and six tints: Caramel, Cherry Red, Very Berry, Sunset, Crystal Rose, & Almost Nude

Clinical Study Available Upon Request

NO MINIMUM ORDER



CLINICIANS COMPLEX™
MEDICAL SKINCARE

www.clinicianscomplex.com | sales@clinicianscomplex.com

Distributed by: COSMED, Inc. Atlanta, GA 30517 • USA • 800-826-4480

cleared by the Food and Drug Administration (FDA) for dermatologic use.

This guideline can be problematic because many cosmetic practices are owned by non-core physicians. This is not to say that non-core physicians cannot supervise Nurse Practitioners (NPs) and Physician Assistants (PAs) who are engaged in aesthetic medicine. It does mean that greater care in training and documentation is called for. It would also be prudent for the non-core supervising physician to attend training courses in aesthetic medicine and retain documentation of that training.

To ensure patient safety and minimize legal risks, every aesthetic medical practice should have the "Three P's" in place. These are practice "policies, procedures and protocols." The supervising physician should develop, implement and review the "Three P's" at least once every six months. Ancillary medical staff should review them regularly as well.

Physicians who supervise employees who perform medical treatments at a non-physician-owned facility expose themselves to significant risk.

Supervising Someone Else's Employees

A more complicated and often misunderstood scenario occurs when a physician is hired to supervise staff performing medical aesthetic treatments at a facility not owned by the supervising physician. Many physicians believe that they have more flexibility and less responsibility when they are supervising employees or contractors of another facility. Nothing could be further from the truth.

This aspect of physician supervision must be broken down into two elements: A situation in which a physician is supervising aesthetic medical providers in a facility owned by another physician; and a scenario in which the physician is supervising aesthetic providers who are performing medical treatments and the owner of the facility is not a physician.

It would be prudent to create an agreement between the supervising physician and the owner-physician that spells out the terms of the training, supervision and ongoing involvement.

Under the first scenario, it can be argued that the employees and contractors of the other facility are performing medical aesthetic procedures under the delegation of the owner-physician. In this case, the supervising physician would be providing his or her aesthetic medicine expertise as a form of advanced training. This is a sound argument, and the respective documents and agreements between the physicians should reflect this scenario. If new treatments are being introduced as part of this training and supervision, the supervising physician and owner-physician can develop the "Three P's" together with the owner-physician ensuring that all protocols and procedures are appropriately followed and implemented.

Both physicians should carry appropriate insurance to protect each other and their respective corporate entities. It would be prudent to create an agreement between the supervising physician and the owner-physician that spells out the terms of the training, supervision and ongoing involvement with staff members.

The situation becomes much riskier if the physician is supervising medical and non-medical personnel who perform medical treatments at a facility that is not physician owned. (For example, many non-physicians own medical spas that perform medical treatments.) This scenario is not legally supportable.

There is no distinction between aesthetic medicine and traditional medicine when it comes to inappropriate personnel performing medical procedures. Accordingly, there are Unauthorized Practice of Medicine (UPM) issues as well as Corporate Practice of Medicine (CPOM) issues. These topics have been covered in prior issues and it is well worth the time to review these issues. As you deviate from these basic concepts, you are taking a risk.

continued on page 78

INTRODUCING:

ImpactDeep

Beauty ReEnergized

Alma Lasers™

THE LATEST SONOPHORESIS TECHNOLOGY TO DELIVER HEALTH BEAUTIFUL SKIN

Improve the appearance of skin imperfections including:

- REDNESS
- FINE LINES AND WRINKLES
- SUN DAMAGE
- DEHYDRATED SKIN
- OILY OR CONGESTED SKIN
- PORE SIZE

Call us to schedule a demo
or Visit us on the web!

866-414-ALMA

www.almalasers.com/impact.jsp

IM03271401 Rev. A

Connect with
Alma Lasers