



Nurses and Delivery of Care

Variations in state regulations make it imperative for nurses and medspas to review employment arrangements.

As technology and medicine have evolved together, the vital role nurses play in health care has expanded dramatically. This is especially true in aesthetic medicine, where nurses regularly perform dermal filler and neurotoxin injections, carry out laser treatments and take a more active role in patient consults.

Historically, and with limited exceptions, nurses are *dependent* medical providers, meaning that they work in conjunction with physicians and medical facilities. Rarely are they able to practice medicine independently.

As demand for cosmetic medicine has grown, nurses have been called upon to perform noninvasive treatments in addition to more traditional functions, such as assisting in surgeries and providing postsurgical care. And, as early entrepreneurs—especially from the business sector—expanded into laser centers and medspas, they started directly employing nurses to deliver medical treatments. The perception became that it is legally supportable for nurses to perform these services without a traditional employment arrangement with a physician or medical facility. In most instances, however, it is not.

In order to perform medical procedures, nurses should have a written agreement with a physician—it may be a direct employment agreement or an independent contractor agreement. Another important aspect of the nurse/physician relationship is that the physician (or their appropriate

medical entity) be the person or entity that pays the nurse. A non-physician-owned spa may employ nurses, but not for the delivery of medical or cosmetic medical procedures.

Many nonmedical facilities have attempted to circumvent the legal requirements by hiring a medical director to supervise the nursing component of the facility. This is an improvement, but it does not alter the fact that nurses are dependent practitioners. In fact several states, including California, have specifically stated that such arrangements are not enough to satisfy the legal requirements that enable nurses to perform laser and many injectable filler procedures absent the appropriate employment/contractor relationship with a physician.

When a nurse is employed by a physician, however, the situation is dramatically different—they are able to perform aesthetic medical procedures under physician supervision and delegation guidelines.

NPS AND ADVANCED CARE NURSES

Further complicating the conversation is the growing number of mid-level providers in cosmetic medicine. Physicians assistants and nurse practitioners (NPs) are much more prevalent today, and their certifications—in many states—allow for more independent decision making than a registered nurse. In addition, almost half of

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1. Information obtained from "Ozone Potentiates Vitamin E Depletion by Ultraviolet Radiation in the Murine Stratum Corneum." G. Valacchi, S.U. Weber, C. Luu, C.E. Cross, and L. Packer (2000).

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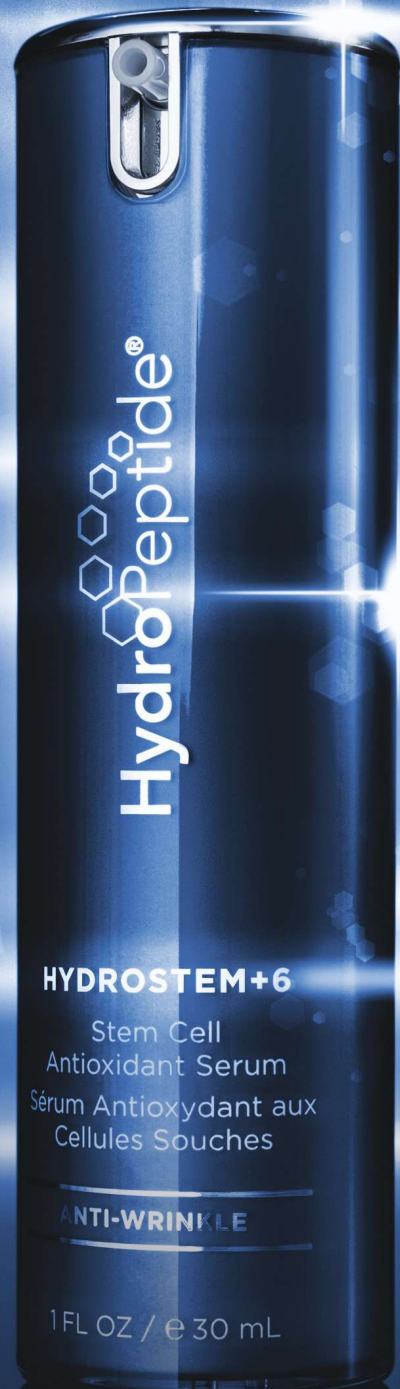


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the states have expanded the scope of the nursing practice, while others are currently analyzing the relationship in an effort to determine whether further expansion is appropriate.

For example, New York state recently passed the Nurse Practitioners Modernization Act, which eliminates both the need for a written, collaborative agreement between an NP who runs her own facility and a physician and the previous requirement for a retrospective chart review every three months. In Minnesota, NPs can now diagnose, write prescriptions, order tests and refer patients. Michigan is also in the process of expanding the scope of practice for NPs. If Senate Bill 2 passes, they will be able to diagnose and treat patients without direct physician supervision.

Under most current state laws, advanced care nurses may perform acts of medical diagnosis, deliver treatment and prescribe medications. This is important to medical aesthetic facilities, since many states now require that cosmetic patients have a “good faith” examination prior to their procedures. However, even this expansion of the scope of nursing does not enable them to perform medical procedures without the appropriate arrangement with a physician in most states. Even when there is a legal arrangement, the

nature of the physician/nurse relationship should be identified in a protocol that maps out the medical duties to be performed and the conditions for their performance. The physician should prepare these protocols, review them with the medical staff and update them as new procedures and devices are brought into the practice.

The proverbial bottom line is that if you are practicing medicine or utilizing medical devices, you must strictly adhere to the scope of practice guidelines for your licensure. With limited exception, registered nurses are not permitted to practice medicine apart from a traditional physician or other appropriate medical facility. At the same time, states are expanding the scope of practice and decreasing supervision guidelines for nurse practitioners. Compliance actions in the medical aesthetics industry are on the rise—this mandates even greater care in reviewing and formalizing your current business arrangements. **ME**

Padraic B. Deighan, JD, PhD, is president of Aston McLaren, a medical and spa consulting firm, and the former president and CEO of DermAmerica, the nation's largest network of dermatology and plastic surgery centers. Contact him at 877.557.9669, medicalandspaconsulting.com.

CYBER SECURITY: RISK MANAGEMENT 101

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medical spa or aesthetic practice should provide breach notification.

- **Share the liability** by demanding similar protocols of colleagues, suppliers, vendors and partners—and checking for compliance.

Getting Covered

Unfortunately, practice owners often discover what is—and what isn't—covered by their insurance policies only after a cyber attack. Business interruption insurance policies rarely help in the event of a system failure due to a malicious employee, computer virus or hack. Similarly, identity theft, telephone hacking and phishing scams are all very real possibilities rarely covered by traditional practice or business interruption policies, including umbrella and blanket liability insurance policies. Some insurance policies offer general liability protection, while Directors and Officers (D&O) liability may provide a measure of coverage for these areas.

Cyber liability insurance, which has been available for almost 10 years, can cover the loss of profits from a system outage caused by hacker attacks, viruses and worms that steal or destroy a business's data. Even email or social networking harassment and discrimination

claims can be covered, along with trademark and copyright infringement, through these policies. When looking into cyber insurance, make sure that all potential risks are covered. Portable devices make it much easier to both store and lose information; a missing USB stick, a stolen iPad or a laptop left in a taxi are all real possibilities and, for a hacker, a goldmine.

A good insurance company will usually ensure their policyholders have all the necessary protections in place. They can put a firewall in place to protect the practice's network, and help create social media policies that will reduce risk and potential liability. Even if data is stored in the cloud, the medical aesthetic practice may still be liable for a breach. Cyber insurance can protect against these breaches as well.

Hackers are getting more sophisticated every day, sometimes forming syndicates of like-minded criminals to share information and new techniques. Practices and businesses, even independent medical practitioners, are increasingly in their crosshairs and need to use every protection strategy available to combat the growing cyber threat. **ME**

Mark E. Battersby is a Philadelphia-based freelance writer specializing in business finance and insurance topics.

MedEsthetics®

PUBLISHER/CEO Deborah Carver • dcarver@creativeage.com
 VICE PRESIDENT/CFO Mindy Rosiejka • mrosiejka@creativeage.com
 EDITORIAL DIRECTOR Stephanie Lavery • slavery@creativeage.com
 EXECUTIVE EDITOR/ASSOCIATE PUBLISHER Inga Hansen • ihansen@creativeage.com
 ASSOCIATE EDITOR Laura Beliz • lbeliz@creativeage.com
 CONTRIBUTING EDITOR Linda W. Lewis

ASSOCIATE PUBLISHER/ADVERTISING DIRECTOR Lisa Fisco • lfisco@creativeage.com
 ACCOUNT EXECUTIVES Diane Jones • djones@creativeage.com
 Jerry Lovell • jlovell@creativeage.com
 Nazli Santana • nsantana@creativeage.com
 Danielle Timsit • dtimsit@creativeage.com

CREATIVE DIRECTOR Dawn Cobalt
 ART DIRECTOR Susie Lieu Almazan • salmazan@creativeage.com
 PHOTO EDITOR Armando Sanchez
 PREPRESS MANAGER Sophia Freeman

MARKETING DIRECTOR Andrew B. Smith
 WEBMASTER/DESIGNER Ryan Boydston • rboystun@creativeage.com
 WEB DEVELOPER Mantas Andri

PRODUCTION DIRECTOR Garnet Blair
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CIRCULATION DIRECTOR Barbara Shepherd • bshepherd@creativeage.com
 AUDIENCE MARKETING MANAGER Jamie Andrew • jandrew@creativeage.com
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Website: medestheticsmag.com

Editorial & Sales Offices: 7628 Densmore Avenue, Van Nuys, CA 91406
 818.782.7328 • Fax: 818.782.7450

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