Dentists grinding their teeth to get into the medical spa area ... but is it legal?

By Renee E. Coover, JD

The medical spa industry is exploding with innovative technology, advanced face and body treatments that promise to erase years, and non-invasive techniques that are quickly replacing traditional surgical procedures. And with such a surge in popularity, it is no wonder that the med spa industry is attracting dentists across the country who all want a piece of the action.

In fact, I just received calls from two dentists last week, both eager to become owners or medical directors at Chicago med spas and curious about whether it is possible under Illinois law. These are tough questions because even in Illinois, where the laws are relatively strict as to who may own a med spa, there is still some gray area when it comes to who can perform Botox and laser hair removal – popular treatments in the med spa setting.

So what is the answer? Can dentists own medical spas? Well, it depends on where you live. In Illinois, only a licensed physician may own a medical spa. Under the Illinois Medical Corporation Act, a medical spa, or any entity that provides medical treatment, must be owned and operated only by persons licensed under the Medical Practice Act of 1987 (the Medical Practice Act governs the medical licensing of physicians). In short- dentists and other non-physicians cannot own medical spas.

Similarly, a medical director of a medical spa must be a licensed physician in Illinois. Although it has become common for non-physicians to own medical spas and hire on “medical directors” just to perform medical treatments, this is illegal in Illinois. The medical spa must be physician-owned and should be operated under the full-time, on-site supervision of a licensed physician. Since a dentist is not a licensed physician, a dentist may not act as medical director of a medical spa.

But this is not true in all states. In Florida, for example, anyone, including a dentist, can own a medical spa. But according to AmSpa partner and attorney Jeffrey Cohen, “current statutes prohibit dentists from serving as a medical director of a med spa.” In Indiana, a dentist may own a medical spa as long as the term “medical” is not used in the corporate name of the med spa and a dentist is allowed to serve as a medical director. In Nebraska, a dentist can own a medical spa or act as the medical director, but cannot perform medical spa procedures.

As you can see, each state has varying degrees of permissible involvement by dentists in the med spa arena. And because each state’s laws are different, whether a dentist can own or operate a med spa really depends on what state the dentist is in.
Another question I have frequently been asked by dentists hoping to get a piece of the profitable med spa pie is whether they can perform Botox and filler treatments as part of their practice. The answer? Again, it depends. In Illinois, a licensed dentist may administer Botox or other injectables to limited areas around the mouth; however, dentists should remember that, the farther away the treatment from the mouth, the more questionable the treatment becomes. In accordance with the Illinois Dental Practice Act, the use of Botox and other injectable cosmetic treatments falls within the scope of dentistry as long as it involves “conditions within the human oral cavity and its adjacent tissues and structures.” 225 ILCS 25/4(k).

In fact, in most states, dentists are limited to injecting Botox or other injectables in certain areas around the mouth. In Kentucky, much like Illinois, the use of Botox and other injectables falls within the scope of dentistry as long as it involves conditions surrounding the mouth. In Missouri, the law does not provide express guidance on whether dentists may administer Botox or other injectables. But according to Missouri AmSpa partner and attorney, Richard Watters, a Missouri dental license “may allow a dentist to use Botox if it is consistent with the practice of dentistry.” In Florida, where the laws are typically more lenient for med spas, the Board of Dentistry allows dentists to administer injectables to manage facial pain but surprisingly, has not formally approved dentists to administer injectables for cosmetic reasons.

Based on these varying laws and regulations, I suggest that dentists check with an attorney in their state to find out if they are allowed to administer injectables. And, before administering injectables like Botox, dentists should also check with their malpractice carrier to find out if injectable treatments are covered procedures.

While it seems obvious that in most states, dentists are allowed to inject Botox in areas around the mouth, another popular, and profitable med spa treatment that dentists want a part of is laser hair removal. But can dentists perform laser hair removal and other medical treatments on areas of the body other than the mouth?

Of course, it depends. In Illinois, the use of lasers for cosmetic or medical procedures that disrupt the epidermal surface of the skin (i.e. laser hair removal and laser skin rejuvenation) is considered to be the practice of medicine and can only be performed by a physician licensed to practice medicine.

This does not mean, however, that only physicians can perform laser treatments. Under Illinois law, licensed physicians may delegate the performance of laser procedures to other medical professionals under certain circumstances.

If a dentist is certified as a laser technician and trained to perform laser treatments, a physician may delegate the performance of laser treatments to the dentist, as long as the physician supervises the procedure or is available if necessary. Importantly, the dentist should be careful not to hold him or herself out as a dentist but instead as a laser technician when performing laser treatments.

In other states like Kansas, Indiana, and Kentucky, similar rules apply. Physicians may delegate laser procedures to dentists if they possess the requisite training, experience and education to perform these procedures.
I have seen many dentists get in trouble with their state regulatory agencies for jumping in as a medical director or firing a laser at a med spa without knowing and following the laws and regulations of a particular state. If dentists do not follow the applicable laws and regulations in their state, they could face suspension, revocation or even the loss of their license to practice dentistry. Before opening a med spa, or including med spa treatments in your current dental practice, it is important to consult with an attorney who can guide you through the legal process.

*Please note that none of the information in this article should be considered legal advice. Every situation is different, and the laws of every state are different. Only a qualified local health attorney can advise you after hearing all the facts of your specific case. If you do not know an attorney, please contact the American Med Spa Association (AmSpa) for assistance (312.981.0993 or info@americanmedspa.org).

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