

Successful Delegation

Comprehensive training, familiarity with state regulations and patient communication are key to successfully integrating physician extenders.

By Linda W. Lewis

THE DEMAND FOR

noninvasive cosmetic procedures continues to grow, outpacing surgical procedures in plastic surgery practices and comprising a high percentage of the work performed in many dermatology practices. Also growing is the number of physicians delegating aesthetic procedures to registered nurses (RNs), nurse practitioners (NPs), physician assistants (PAs) and estheticians.

“From an economic point of view, the use of extenders makes great sense,” says Michael H. Gold, MD, medical director, Gold Skin Care Center, Nashville, Tennessee. “They are skilled providers who help perform a service to my patients and can help generate income for our practice that has allowed us to greatly expand our level of service and the services we provide.”

Medical aesthetic practices that are hesitant to use physician extenders point to a possible erosion in the quality of patient care and a potential increase in medical liability claims. In February, a team led by dermatologist H. Ray Jalian, MD, of Massachusetts Dermatology Laser and Cosmetic Center, published a review in *JAMA Dermatology* of litigation stemming from cutaneous laser surgery procedures performed between 1985 and 2012. They found that litigation was becoming more prevalent as the number of procedures increased. Of the 174 cases they reviewed, more than 40% were performed by non-physician operators, who were named in lawsuits along with their physician supervisors.

Laser hair removal—the most common laser treatment during most of the period under investigation—generated the largest number of lawsuits. The increase in litigation has brought a concomitant rise in indemnity payments, which have reached a mean of \$380,719, according to Dr. Jalian's review, which stressed: "Physicians will be held responsible for the standard of care provided by their nonphysician agents."

Avoiding Legal Pitfalls

A patient lawsuit isn't the only way physicians can find themselves in legal hot water when it comes to delegating procedures. There are no federal standards dictating who can operate lasers and other types of equipment used in medical aesthetic practices. Instead, each state has its own set of regulations. These vary wildly and can be difficult to decipher.

"In California, lasers and IPL (intense pulsed light) or BBL (broadband light) devices can be operated only by physicians, PAs or RNs. Practical nurses and other assistants can help with some procedures like CoolSculpting, Omnilux LED, microdermabrasion and VelaShape, but only under physician supervision," says



Delegation Checklist

- **Be sure physician extenders** are qualified to perform the procedures you delegate. Maintain a personnel file for each staff member including all certificates and other evidence of training.
- **Have all staff members** wear name tags that include titles, such as "RN" or "Laser Technician" so there's never any question of who is or isn't a physician.
- **Don't work with more extenders** than you can manage, and never delegate a procedure that you have not mastered yourself.
- **Always have a physician available** and easily accessible should any problem arise.
- **Chart all procedures**, fully explaining any incidents that may occur. Include everything from whether a patch test was done to what settings were used, as well as any follow-up phone calls or letters.
- **Record complete treatment protocols**, keep them easily accessible and update them regularly.
- **Have each patient sign** an informed consent before beginning any procedure. The form should clearly state any possible problems and the range of outcomes, as well as who will be performing the procedure and that person's credentials.

patients are amenable. This will not be the case in every office and the physician should be prepared to work closely with his or her own staff to determine which, if any, of their medical device treatments can be delegated to appropriate personnel."

In some states there are no regulations governing who can use lasers and in others the regulations are not clear. "In New York there are still a lot of gray areas when it comes to what kind of procedures can be delegated and to whom," says Bruce Katz, MD, director of New York's JUVA Skin & Laser Center. "We are a high profile practice and don't want to take chances. We have

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Suzanne L. Kilmer, MD, founder of the Laser & Skin Surgery Center of Northern California.

The state of Tennessee does not restrict the procedures that can be performed by assistants working under the direct supervision of a physician. "We delegate most laser and light source treatments to appropriate, well-trained staff," says Dr. Gold. "My extenders are well versed in the use of IPLs and most fractionated lasers, RF and ultrasound technologies. We also delegate injections of toxins and fillers to skilled nurses, PAs and NPs, if

three PAs and an NP doing noninvasive procedures using devices such as the Exilis, the Clear Lift and the Q-switch YAG for tattoo removal. Extenders do not do even minimally invasive procedures."

Ferretting out rules of delegation for your practice or your medical spa requires skill and perseverance. Too often busy physicians are tempted to rely on what the practice down the street is doing. Unfortunately, even if that practice has been in business for years, it may not know any more than you do. What's more, new

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regulations are being approved all the time.

“Some state regulations allow physicians to delegate the operation of all lasers to qualified support staff onsite and don't differentiate between IPL devices and much more powerful lasers. In other states, physicians can delegate to different assistants based on whether the device is ablative or nonablative,” says Andrea Nadai with Boston MedTech Advisors (bmtadvisors.com), a consulting company that researches legislation relevant to aesthetic medical practices and medical spas in all 50 states. “In a few states, regulations don't even mention lasers or other types of devices and rely entirely on general rules of delegation.” She notes that some states do not consider laser hair removal to be a medical procedure and allow any qualified operator to perform it, while other states designate it a medical procedure subject to the same delegation rules that apply to other lasers.

“In almost all states—New Jersey is one exception—physicians can delegate some procedures to some type of extender,” says Nadai. “Where it gets tricky is the level of supervision—whether the physician must be onsite, for example, or whether the physician must examine the patient before the treatment. Requirements can be as stringent as constant onsite supervision or as lax as meeting with extenders once a month to review charts.”

Therefore it is important to do your homework. “Get full information firsthand,” Nadai recommends. “Be really thorough. Your reputation and even your license may depend on it.”

Some experts recommend hiring an attorney to be sure your practice or medical spa is following all the

rules. Boston MedTech Advisors works with practices to compile comprehensive regulations for any changes they might want to make, including the addition of a medical spa apart from their primary practice. This can entail looking not only at medical board regulations but a variety of state boards and departments. In Florida, for example, regulations governing laser hair removal reside with the State Electrolysis Board; in Texas you'll find them under the Department of State Health Services; and in Arizona the Radiation Regulatory Agency has jurisdiction.

What happens if you get caught using an unauthorized person to perform a medical treatment? Penalties vary by state, just as the regulations do. In California, physicians can be charged with aiding and abetting the unlicensed practice of medicine, and the person performing the procedure can be charged with the unlicensed practice of medicine. California penalties for illegally operating a spa that offers medical aesthetic procedures were recently increased to a fine of \$50,000 or more and imprisonment for up to five years.

Training and Oversight

Training requirements are part of the regulations in some states. However, in most cases physicians determine what kind of training their assistants need. Massachusetts requires anyone authorized to perform cutaneous procedures—even with nonablative devices—to have a certificate of training in laser physics and safety, as well as training by a nationally recognized and accredited continuing education program on the safe use and handling of these devices. Resources like the Texas Laser Institute (texaslasers.com) and the National Laser

Training Resources

Here are just a few of the educational programs that offer training for physician extenders.

American Academy of Facial Esthetics, facialaesthetics.org

Training courses for healthcare professionals in laser skin treatments, microdermabrasion and chemical peels.

The Esthetic Skin Institute (ESI), esiw.com

Certification in chemical peels, microdermabrasion and laser, pulsed light and energy-based equipment for RNs, NPs and PAs

IMAJ Clinical Aesthetics & Laser Training School, imajschool.org

Both traditional aesthetic license training and comprehensive laser technician certification; hands-on training in laser hair removal, RF skin tightening, IPL treatments, etc.

The Laser Training Institute, lasertraining.org

Hands-on training in aesthetic laser procedures for nurses, technicians and aestheticians.

National Laser Institute, nationallaserinstitute.com

CME and CEU training in laser hair removal, photofacials, tattoo removal and ablative skin resurfacing

Texas Laser Institute, texaslasers.com

Certification in laser hair removal, IPL treatments, tattoo removal, fractional laser treatments and more.



Institute (nationallaserinstitute.com) offer a variety of courses ranging in length from a few hours to several days with certificates covering everything from laser hair removal to varicose vein treatments. (See "Training Resources" on page 36.)

"Our assistants must have extensive overall training as well as device-specific training," says Dr. Kilmer. Often device-specific training is purchased along with the equipment and provided by the device manufacturer. Both Dr. Gold and Dr. Katz call for training well beyond a few hours with a manufacturer's expert.

"Training is the most important aspect of utilizing physician extenders to their full potential," says Dr. Gold. "We begin with a thorough understanding of the device at hand and we make sure that each extender understands that individualized treatment is the most crucial aspect of our patient care. Most of the devices we use have built-in default settings, which are adequate for most patients, but we teach our extenders how to best use settings to achieve superior results." Training in his practice involves spending a great deal of time with him and also with the clinical trainers from the device companies. "This allows our team to learn all the nuances for each device used. We constantly review all of our treatment protocols to make sure everyone is using them appropriately in order to achieve the best results," he says.

"You see extenders in every form of medicine. Our physician extenders are always licensed and well trained," says Dr. Katz. "Everyone wears a name tag which displays his or her credentials. As long as the patient is told beforehand that the procedure will be done by someone other than the doctor, most patients are fine with this. Often the PA or NP will be able to spend more time with the patient."

In his practice, PAs and NPs must demonstrate their proficiency by working on staff members or family before working on patients. "Only when I am confident of their skills can they begin to treat patients," says Dr. Katz. "We have written protocols for every procedure we offer. Assistants must document the procedures they do in a log that I monitor. This way we don't have problems."

Training assistants to keep medical charts is also important. "We require the same records for our aesthetic patients as for our medical patients," says Dr. Kilmer.

Dr. Katz stresses that physicians must understand that assistants are an extension of their reputation. "Establish standards for your practice and make sure anyone working with you is properly trained and able to project the same professionalism you show your patients," he says. "Make sure each assistant projects the same values and skills you have used to make your practice work. One of our PAs has been with us for eight years, another for six and the NP for more than three." He regularly uses secret shoppers to get feedback on all staff members at every point of contact. "Without constant attention things can quickly become less than optimal," he says. "Best practices adhere to continuous evaluation and training." **ME**

Linda W. Lewis is a contributing editor to *MedEsthetics*.