

THE STRESSFUL SIDE OF SPAS

Spa Claims, Operational Considerations, Compliance

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PRESENTERS



- Dana A. Kravetz, Firm Managing Partner
- Chair, Labor & Employment Department
- Practice focuses on employment litigation and counseling
- Counsels and represents management in various employment matters including discrimination, sexual harassment, wrongful termination, wage and hour, FEHA, EEOC, and DLSE claims and other employment related claims



- David Samuels, Senior Litigation Partner
- Member of the Firm's Commercial & Litigation Department, Executive Committee, and Recruiting Partner
- Practices focuses on hospitality litigation. Represents hotels and resorts with respect to a wide variety of general and premises liability matters, contract disputes, and special investigations.
- Defends high exposure/catastrophic injury cases involving commercial premises liability and products liability. His legal practice also involves representing licensees of state agencies in administrative hearings.

SPA-RELATED GENERAL LIABILITY CLAIMS

- Inappropriate Touching or Draping
- Allergic Reactions & Burns
- Equipment Failures
- Premises Liability



GENERAL LOSS CONTROL

- What Types of Services Offered
- Employee Screening/Hiring/Training
- Client Intake Forms/Process
- Client Interview
- Client Exit Questionnaires

INAPPROPRIATE TOUCHING OR DRAPING

- Touching:
 - Always a “He Said vs. She Said”
 - Almost always a male spa tech
 - Client’s willingness to call police at the time
 - Client calls the police after the fact
- Draping:
 - “He Peeked...”

ALLERGIC REACTIONS & BURNS

- Usually Manifest Quickly
- True Product Allergy is Rare
- Retinol
- Hot Stones

EQUIPMENT FAILURES

- Frequent Equipment Inspections
- Protocols for Staff to Report Equipment Problems
- Protocols for Removing Faulty Equipment
- Risks of Leaving a Faulty Piece of Equipment in Service
- Securing a Faulty Piece of Equipment as Evidence

PREMISES LIABILITY

- Traditional Issues re: Inspection and Maintenance
- Special Issues Created by the Spa Environment
- ADA Issues



DOCUMENTATION

- Screening and Training Re: Techs
- Client Intake Sheets and Release Forms
- Client Exit Questionnaires
- Equipment Inspections
- Premises Inspections
- Incident Reports



SPA-RELATED OPERATIONAL ISSUES

- Are You A “Medical” Spa?
- Does Your Advertising Cross the Line?
- Independent Contractor vs. Employee?
- Overtime, Meal Breaks & Rest Breaks

MEDICAL SPA COMPLIANCE

- **Most States –**

- Corporate Practice of Medicine Not Allowed
- Laypersons or lay entities may not own any part of a medical practice.
- Physicians must either own the practice, or must be employed or contracted by a physician-owned practice or a medical corporation.

MEDICAL SPA COMPLIANCE

- **Physician Responsibility**
 - A physician may consult with unlicensed persons in making "business" or "management" decisions.



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MEDICAL SPA COMPLIANCE

- The following types of medical practice ownership and operating structures are usually prohibited:
 - Non-physicians operating in a business for which physician ownership and operation are required
 - Physician(s) operating a medical practice as a limited liability company
 - Management Service Organizations arranging for, advertising, or providing medical services rather than only providing administrative staff and services
 - A physician acting as "medical director" when the physician does not own the practice

MEDICAL SPA COMPLIANCE

Physician Delegation

- Lasers must only be utilized by licensed registered nurses, nurse practitioners, or physician assistants.
- Delegation to improperly licensed personnel, such as estheticians, is prohibited.



MEDICAL SPA COMPLIANCE

- **Advertising**

- Most states have very specific laws prohibiting many of the advertising practices currently being used to promote cosmetic treatments.
- The use of models, without stating that they are models, the use of touched-up or refined photos, and claiming superiority of the facility or procedures with no objective scientific evidence is prohibited.

INDEPENDENT CONTRACTOR V. EMPLOYEE

- Employers often times improperly classify their employees as independent contractors to avoid:
 - Paying payroll taxes
 - Minimum wage or overtime
 - Complying with other wage and hour law requirements
 - Meal periods and rest breaks
 - Reimburse their workers for business expenses incurred for performing their jobs



OVERTIME

- General overtime provisions are that a non-exempt employee shall not be employed more than 8 hours in any workday or more than 40 hours in any work week unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over 8 hours in any workday and over 40 hours in the work week.

MEAL BREAKS

- An employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

REST BREAKS

- Employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four hour work period, or major fraction thereof.

