Under the needle: Navigating legal risks in the medispa sector

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Recent media investigations into the practices of medispas, beauty clinics, and other health and wellness services in Ontario underscore the need for healthcare providers and business owners to have robust quality and safety controls in place to ensure the wellbeing of their clients and to minimize regulatory and other legal repercussions.

As the health and wellness space becomes increasingly popular, resulting in increased demand for services and new opportunities for business owners, so too has regulatory scrutiny and the risk of civil liability and reputational harm.

In Ontario, the health and wellness space is regulated by a complex web of rules and requirements that are imposed by different provincial and federal entities such as the College of Physicians and Surgeons of Ontario, the College of Nurses of Ontario, the Ministry of Health, Health Canada, and the Information and Privacy Commissioner.

These entities have broad statutory powers to conduct investigations into matters relating to practice standards, patient safety, quality concerns, breaches of privacy, infection control, and appropriate use of controlled acts and medical devices, to name a few. The risks for healthcare providers and business owners can be significant. Substantiated concerns of unsafe patient care can result in terms and conditions being placed on licences to practice, public cautions, disciplinary action, fines, penalties and even referral for criminal prosecution in extreme cases. To top it off, legal exposure and potential civil claims for damages add to the risk profile inherent in this evolving industry. Damage to professional and business reputations can be irreversible.

The good news is that many of these risks can be proactively managed. Business owners can significantly reduce their regulatory and legal exposure by implementing robust quality and safety controls that protect the health and safety of their clients and comply with the multitude of regulations.

Below are several common issues that healthcare providers and business owners should consider to help reduce their regulatory, legal, business, and reputational risks.

Key issues for consideration

- **Improper delegation of controlled acts:** Procedures such as Botox injections, dermal fillers, threadlifts, and the use of prescription anesthetics involve controlled acts that may only be performed by authorized health professionals or with proper delegated authority by a physician or nurse practitioner. The College of Physicians and Surgeons of Ontario is in the process of updating its Policy on Delegation of Controlled Acts, and the current draft contains stricter rules surrounding on-site presence of medical practitioners to supervise and support delegates.
- **Fraudulent credentials:** The sector has seen an increase in individuals falsely presenting themselves as qualified health-care professionals by using fabricated or improperly obtained credentials. Beyond the obvious risks to patient safety, this creates significant exposure for operators, including potential vicarious liability for employing unqualified personnel. Implementing a rigorous, well-documented credentialling process is essential to safeguard clients and protect medispa operators from legal consequences.
- **Obtaining consent requires a process, not a form:** Consent forms should be detailed yet clear. However, consent forms alone are often insufficient. Clients are entitled to be informed of the material risks inherent to the procedure they are undergoing, and healthcare providers and business owners should implement robust processes for ensuring that clients understand the risks and can make informed decisions.
- **Be smart when it comes to being first to market:** Medications and medical devices must be approved for use in Canada by Health Canada. Any off-label uses should be grounded in scientific or clinical evidence demonstrating that the benefits outweigh the risks.
- **Comprehensive practice policies are not red tape; they facilitate exceptional client service**: Clinics should have a suite of policies to address key practice issues, reflect applicable regulatory requirements, provide clear guidance to staff, and promote transparency and consistency for clients. Legal exposure often arises from the absence of clear, practical, and consistently implemented policies.

Should you require assistance in navigating these issues or with implementation of compliance and risk management practices, the authors would be pleased to discuss how we can support you or your organization.

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