

Closed Claim: The Importance of Being a "Hands-on" Medical Director



By Stephanie Walkley, JD, BSN

Brandi North,^[1] a 43-year-old stay-at-home mom, presented to a medical spa where she had received various cosmetic treatments over the last few years. The purpose of this particular visit was to discuss options that would help her achieve a smoother appearance of the fine lines on her chest and remove discoloration. She discussed the options of microneedling and intense pulse light treatment ("IPL") with the owner of the medical spa, Carla Donald, NP. After discussing both procedures, Ms. North decided to proceed with IPL, which would require a series of sessions. NP Donald scheduled Ms. North for her first session the following week.

On the day of the first scheduled IPL treatment, Ms. North arrived to find that her treatment would be performed by aesthetician Lindsey Brown. Ms. Brown applied lidocaine cream to Ms. North's chest and allowed it to sit for about 30 minutes. After the cream had ample time to take effect, Ms. Brown performed the IPL treatment on Ms. North's chest taking approximately 30-40 minutes. At no time prior to the procedure did anyone discuss and document the risks of the procedure with Ms. North. Likewise, no one asked Ms. North to sign a consent form.

Once the procedure was over, Ms. North was told to return in one month and released to go home. That night Ms. North reached out to both NP Donald and Aesthetician Brown with concerns about the area on her chest that had been treated. The area was hurting more than anticipated and appeared swollen and burned. Ms. North received reassurance that this was normal.

Rather than wait one month to return to the medical spa, Ms. North returned in one week concerned about the appearance of her chest. It still appeared burned and swollen. She asked for a referral to a specialist for further treatment. Instead of referring her elsewhere, NP Donald advised Ms. North that they could treat the area and convinced her to continue treatment at the medical spa.

Approximately one month later, Ms. North returned to the medical spa. She reported being in pain. The treated chest area was still edematous with irregular patterns in the skin and the presence of ten blisters. Aesthetician Brown advised Ms. North to keep the skin clean and return in one month.

Ms. North returned to the medical spa the next month for another follow-up visit. By this time the area had healed leaving scars where the blisters had been. Aesthetician Brown treated the raised areas with sublative laser therapy and microneedling. She instructed Ms. North to return in two weeks.

At her final appointment two weeks later, Ms. North expressed her dissatisfaction with her treatments and results. She also informed the medical spa that she no longer wanted to be treated by Aesthetician Brown. NP Donald told Ms. North that her chest should continue to improve with time.

Ms. North sought care elsewhere and received injections, microneedling, and IPL treatments from other providers to try and remove the scarring and discoloration. These treatments helped but did not entirely remedy the problems. Ms. North was left with several scars and some discoloration on her chest. Very unhappy with her results, Ms. North decided to pursue a healthcare liability action.

All the treatment on Ms. North's chest occurred without anyone ever notifying the medical director of the medical spa, Dr. Jim Tatum who was the supervising physician for NP Donald and the medical spa staff. He first learned of Ms. North and her treatment when he was served with a lawsuit.[2]

Ms. North filed suit against the medical spa, NP Donald, and Dr. Tatum. The allegations included failure to properly hire, retain, train, and supervise qualified aestheticians; failure to properly assess Ms. North before performing procedures; failure to obtain informed consent; failure to properly document pre-operative and/or post-operative procedures; failure to implement and enforce appropriate policies, procedures, and protocols; and failure to use the care and skill required under the circumstances. SVMIC immediately retained counsel to represent Dr. Tatum in the lawsuit.[3]

Defense counsel for Dr. Tatum soon discovered that the defense of the case would be challenging. The medical records did not contain notes regarding an assessment of Ms. North's skin, whether she would be a good candidate for the recommended procedure, or any discussion regarding the risks, benefits of, or alternatives to treatment. In other words, the medical records were scant and did not contain an appropriate assessment or any documentation regarding informed consent. Furthermore, neither the medical spa nor NP Donald had any type of policies, procedures, or protocols established for the procedures provided at the medical spa or for collaboration with Dr. Tatum.

When defense counsel met with Dr. Tatum, they learned that he took a "hands off" approach with the medical spa. Dr. Tatum had a long-standing professional relationship with NP Donald. He signed on as her supervising physician and as the medical director of the medical spa without thoroughly investigating or understanding what his duties and responsibilities would be in those roles. Dr. Tatum did not know what procedures the medical spa offered or whom among the staff would perform these procedures. He trusted that if there were any medical issues that needed his expertise either NP Donald or the medical spa staff would notify him. This "hands off" approach runs afoul of the Tennessee rules for physicians supervising nurse practitioners and for serving as medical director/supervising physician[4] of a medical spa. At the beginning of litigation, it became apparent that it would be best to try and resolve this case. The parties successfully mediated a settlement.

There are several lessons to be learned from Dr. Tatum's case. First and foremost, before agreeing to supervise a nurse practitioner (or any other advanced practice provider) know what your duties and responsibilities are as the supervising physician. Most states have very detailed requirements for the supervision of and/or collaboration with nurse practitioners. For instance, in Tennessee, Dr. Tatum should have had protocols in place and known what his chart review requirements were. Do not set yourself up for potential liability by not knowing and complying with the applicable rules and regulations. Although the nurse practitioner and aesthetician should have notified Dr. Tatum of the problems Ms. North was experiencing, their failure to do so did not absolve him of responsibility in this case. If the appropriate protocols had been established, then his defense would have been

stronger. However, the lack of any documentation or active participation in supervising NP Donald and the medical spa made it appear as though Dr. Tatum was simply collecting a paycheck from the medical spa for the use of his name and license.

Second, and truly just as important, before agreeing to act as the medical director or supervising physician of a medical spa, know what you are getting yourself into. In Dr. Tatum's case, and others we have seen, physicians have agreed to this role without researching the breadth of what it entails. Knowing what duties and responsibilities come with the role of medical director in your state cannot be overstated. This may include knowing what training and certification medical spa staff are required to have for the procedures they perform and verifying staff compliance with these requirements. Dr. Tatum signed off on paperwork without appreciating the work it would require of him.

Similarly, in other cases, there have been physicians that have contracted with medical spas but have otherwise failed to fulfill the requirements as set by the state. For example, the state of Tennessee tasks the medical director or supervising physician of the medical spa with registering the medical spa with the state. If the medical spa is operating without being properly registered, the physician may be subject to disciplinary action by the medical board. In addition, when serving in the capacity of medical director or supervising physician of a medical spa, a physician must also submit an attestation that he or she "assumes and accepts responsibility for the cosmetic medical services provided at the medical spa."

Do your homework and know what is required. The old adage "an ounce of prevention is worth a pound of cure" is sage advice for anyone wanting to work as a medical director or supervising physician in a medical spa. Help yourself avoid potential lawsuits, licensing board actions, and possible coverage issues under your professional liability insurance policy by making educated and informed decisions when deciding whether to act in this role.

[1] Names of all parties involved have been changed.

[2] Tennessee law requires that potential plaintiffs send healthcare providers a notice of intent letter pursuant to Tenn. Code Ann. §29-26-121 at least 60 days prior to filing a complaint based upon health care liability. Dr. Tatum received the letter but did not open it. The failure to open the letter and report it to SVMIC deprived Dr. Tatum of the opportunity to investigate this matter pre-suit.

[3] The medical spa and nurse practitioner were insured by other carriers and had separate counsel.

[4] Tennessee regulations for medical spas use the terms medical director and supervising physician interchangeably.

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