

Bill aims to crack down on illegal medical spas

July 11, 2012 | Anika Anand, California Watch



Robert Kneschke/Shutterstock [1]

Proposed legislation in California would increase penalties for illegally owning and operating medical spas, which in some cases are performing procedures without required medical supervision.

Medical spas provide services such as laser hair removal, Botox injections and microdermabrasion. The cosmetic treatments are considered medical procedures, but at some medical spas, medical professionals aren't giving or supervising the treatments.

From 2002 to 2010, more than 1,500 medical spas opened in the U.S., according to the International SPA Association. There is no official count of medical spas operating in California because they aren't required to register with the state medical board or any other government agency. Under California law, medical businesses must be owned by a physician or owned at least 51 percent by a physician and the remainder by a licensed practitioner, such as a nurse.

Also, a physician or an advanced practitioner, like a physician assistant or nurse practitioner, needs to examine the patient before any treatments,

such as Botox or dermal fillers, are administered or prescriptions are given. But advocates of [AB 1548](#) [2] say that when medical spas get caught operating illegally, the fines aren't harsh enough to dissuade them from doing it again.

Assemblywoman [Wilmer Amina Carter](#) [3], D-Rialto, said she is sponsoring the bill because she is concerned about patient safety.

"Alternative patient treatment sites, often called 'medi-spas,' have and continue to be a major and often misleading presence in the medical cosmetic skin care field," Carter said. "While the demand for cosmetic procedures is on the rise, the risk to patients resulting from inadequate supervision is unacceptable."

In April, the state Assembly approved the bill, which calls for increased fines and more jail time for illegal medical spa offenders. Last week, the Senate unanimously approved the bill, which is now awaiting approval from Gov. Jerry Brown.

Under current state law, any person found guilty of illegally operating or helping to illegally operate a medical business can be charged with a misdemeanor or felony. Penalties include a fine of \$200 to \$1,200, a 60- to 180-day jail sentence or both. AB 1548 proposes raising the maximum fine to \$50,000 and instituting a maximum two- to five-year sentence in a state prison if the services exceeded \$950 in cost to the patient. If costs are less than \$950, the offender could receive a six-month jail sentence, maximum \$1,000 fine or both.

"This legislation increases the penalty so much that it actually gives the state funding to enforce the law and it acts as an actual deterrent," said Lisle Soukup, director of advocacy and public policy for the American Society for Dermatologic Surgery. "It's not just a patient safety issue; it's a consumer fraud issue. Patients are assuming the people in the white coats that are offering their treatments are appropriately trained and supervised – but unfortunately, that is frequently not the case."

The group sponsored the bill along with the California Society of Dermatology & Dermatologic Surgery.

Dr. M. Christine Lee, a dermatologist and director of The East Bay Laser & Skin Care Center in Walnut Creek, is an advocate for tougher regulations. Since 2000, she has treated patients with minor to severe burns, nerve damage, eye damage, permanent keloids, and permanent scars from medical spa treatments.

In 2004, she said she treated a patient whose face was covered with black stripes, burn marks from attempted laser hair removal. Lee said she ended up seeing a dozen women burned the same way after visiting the same medical spa. Most of the botched procedures Lee has seen were done by nurses or non-nurses, she said.

Every month, Lee said she sees an average of five people who had treatments go wrong. AB 1548 would help cut down the number of medi-spas performing illegal procedures, she said.

"It's much needed because the penalties aren't stringent enough to actually deter this type of illegal activity," Lee said. "The problem is, if you don't have penalties that have any bite, then people don't care. They think it's just a minor fine."

Soukup said her group has been trying to get legislation passed for the last two years. In 2010, the Assembly and Senate passed [AB 2566 \[PDF\]](#) [4], which was similar to the bill now before Brown. But then-Gov. Arnold Schwarzenegger vetoed the bill later that year. In his [veto letter \[PDF\]](#) [5], Schwarzenegger said that rather than investigating medical spas, the medical board's time was better spent investigating physicians accused of causing serious patient harm or death.

The medical board doesn't regulate medical spas. But through its Operation Safe Medicine program, it regulates the unlicensed practice of medicine and investigates complaints.

Defense attorney Tracy Green, who has represented a number of medical spa owners and employees over the past 12 years, said she has seen a recent increase in the number of illegal medical spa cases the state is prosecuting.

"In the past 10 years or so, if it was suspected that a medical spa wasn't in compliance with the law, the Department of Consumer Affairs or the California Medical Board would just send them a letter asking them to comply," Green said. "Now, in the past year, I've seen the state executing search warrants and treating this like a felony."

Green is representing a nurse in a Beverly Hills case that also involves a medical spa owner, an employee and a physician. The four were arrested in June and charged with felonies by Los Angeles County District Attorney Steve Cooley. After receiving a complaint alleging that medical procedures and "inappropriate medical services" were being provided at Dana Elise Solutions, formerly known as Laser Solutions, in Beverly Hills, investigators from the California Medical Board "seized evidence of illegal ownership and illegal practice of medicine" in December 2011, according to an agency [press release](#) [6].

The undercover operation found that non-physicians were giving medical treatment and prescription medications were being sold without a physician's order or without the patient being seen by a doctor, the release says. The medi-spa's services include electrolysis, microdermabrasion, and depigmentation and exfoliation peels, according to its [website](#) [7].

Dana Elise Payinda, owner of Dana Elise Solutions, is being charged with eight felony counts of practicing medicine without a license. Her colleague, Dr. Debra Beth Luftman, is charged with aiding and abetting the unlicensed practice of medicine. Nurse Kimberly Benner and employee Tracy Lynn Poire are charged with practicing medicine without a license.

Green said that although the state can prosecute the women for felonies, she thinks it's too harsh.

"Everyone I've ever represented genuinely had no idea they were breaking the law," Green said. "This isn't a bunch of organized crime operating medical spas. ... It's just a matter of people not knowing what the laws are."

So far this year, Green has handled four criminal cases related to illegal medical spa operation. She said it's the first time she has had cases involving the unlicensed practice of medicine at a medical spa that were criminal cases. She also has worked with 10 spas this year to make sure they are fully compliant with the law.

While Green recognizes it's necessary to make sure medi-spas are in compliance, she doesn't think the criminal charges are necessary. "It's heavy-handed, in my opinion," she said. "They can send a cease-and-desist (order). I don't know if they need to file criminal actions. If these are repeat offenders or someone who's told that this is the law, then that's different."

But dermatologist Lee said she has seen enough harm caused by unlicensed medical spas. "If you make a point of not wanting to learn the law, ignorance isn't an excuse," she said.

© 2012 California Watch

Original URL: <http://californiawatch.org/dailyreport/bill-aims-crack-down-illegal-medical-spas-17006>

Links:

[1] <http://www.shutterstock.com/pic-103073564/stock-photo-woman-in-beauty-clinic-getting-botox-injection-to-remove-eye-wrinkles.html>

[2] http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml;jsessionid=e3a9516ccf7dd9e9bcbb0cd9f919?bill_id=201120120AB1548

[3] <http://asmcd.org/members/a62/legislation?layout=item>

[4] <http://votesmart.org/static/billtext/32381.pdf>

[5] <http://votesmart.org/static/vetotext/32381.pdf>

[6] http://www.mbc.ca.gov/board/media/releases_2012_06-08_luftman.html

[7] <http://www.lasersolutions90210.com/>