

## **ASDSA State-by-State Medspa Policy Forecast for 2010**

- California:** The ASDSA and CalDerm will hope that the third time's the charm in terms of re-introducing the aforementioned patient safety legislation. Dermatologic surgeons with connections to consumer groups, and national and California-based medical associations are encouraged to assist with advocating for the bill's passage. The Medical Board of California's Advisory Committee on Medspa Supervision will hold its first meeting on January 28. The California Medical Association is again expected to introduce truth in advertising legislation.
- Connecticut:** Despite being defeated on the issue last year, the Connecticut Electrology Society is back with its bill to allow electrologists to perform laser hair removal without physician oversight or supervision, and to removal laser hair removal from consideration as the practice of medicine. Once again, the ASDSA will work proactively with the Connecticut Dermatology Society, the AADA, and other groups to aggressively oppose this inappropriate scope of practice expansion.
- Florida:** Almost immediately after the highly-publicized liposuction death of a nurse in an unlicensed medspa, mentioned earlier in this article, speculation regarding the need for a tightening of state medspa laws and enforcement. The ASDSA will monitor this issue closely and work with the Florida Society of Dermatology and Dermatological Surgery, Florida Society of Dermatologic Surgeons, and Florida State Medical Association to advocate for fair and appropriate changes to state law. Additionally, the Florida Electrolysis Council is attempting to change the State's rule requiring physicians to provide on-site supervision for electrologists performing laser hair removal. The aforementioned groups are also working together to quash that effort.
- Iowa:** The Iowa Board of Medicine met in December to discuss alternative language for its proposed rule on medical directors at medspas. Among the recommendations were a stand-alone chapter for medical directors of medical spas similar to the stand-alone which currently exists chapter for physician supervision of physician assistants.
- Illinois:** In December, Illinois Attorney General Lisa Madigan charged the Nu U Medspa chain with consumer fraud for advertising the non-FDA approved LipoDissolve mesotherapy treatment. Additionally, the Attorney General's complaint alleges that Nu U Medspa violates several state laws, including the including the Consumer Fraud and Deceptive Business Practices Act for deceptively ricked signing up patients for financing a series of treatments. The ASDSA is reaching out to Attorney General Madigan to encourage her to adopt this issue on a larger scale.
- Mass.:** The medspa bill mentioned in this article is likely to be heard in March or April. ASDSA will provide regular reports regarding the bill's status and any advocacy opportunities through our e-newsletter and e-advocacy alerts.

- Maryland:** In August 2009, the State Department of Health and Mental Hygiene proposed new regulations to strengthen training and supervision requirements for physicians delegating cosmetic medical procedures to licensed health professionals, and imposing a fine up to \$50,000 to non-physicians or entities in violation of the regulation for the first offense. The ASDSA supported this proposal. As of this writing, a public hearing on the regulatory proposal had not yet been scheduled.
- MN:** In 2010, the ASDSA will support the Minnesota Dermatological Society and the Minnesota Medical Society in advocating for legislation to define both non-ablative and ablative laser treatments as the practice of medicine and clarify appropriate training, supervision and delegation requirements for each. Currently, although any surgical operation including any invasive or non-invasive procedures involving the use of a laser or laser assisted device is considered the practice of medicine, supervision and training requirements for these procedures are not specifically defined. The proposed legislation specifies the type of training required to perform these procedures and requires the supervising physician to be physically on-site at least 50 percent of the time while these procedures are being performed.
- PA:** The ASDSA will be joining with the Pennsylvania Academy of Dermatology and the Pennsylvania Medical Society this year to passage of Senate Bill 1435/House Bill 2727, which would require health care practitioners to wear identification badges which includes their name, photograph and level of licensure whenever they are treating patients, working in a health care facility, or engaged in face-to-face contact with the public in a professional capacity. The bills, referred to the Public Health and Welfare Committee and the Licensure Committee in their respective houses, will automatically carry-over into 2009 without further need for introduction. ASDSA strongly supports the measures as a means to clearly identify for patients the level of training and licensure of their provider and ensure that patients are not misled by individuals who appear “medical-like” but do not have appropriate training.
- Tenn.** Despite opposition by ASDSA, Tennessee Dermatology Society, the Tennessee Medical Association, AADA, the American Society of Plastic Surgeons, the American Academy of Otolaryngology-Head and Neck Surgery, the American Medical Association and others, last year the Tennessee Board of Dentistry passed an amendment to their regulations allowing general dentists to perform procedures utilizing dermal fillers on their patients. The issue will now go to the State Attorney General where it could be stalled if it is determined that the Board of Dentistry abused its discretion in promulgating the rule.
- Texas:** After two lawsuits blocked the implementation of Texas laser regulation, the Board of Medicine repealed the rule in 2008, leaving the laser medical procedures essentially unregulated. Last year, the State passed a law which required those wishing to operate laser or light-based devices for the purpose of

hair removal to complete training and demonstrate competency in order to achieve certification to perform the procedure. Additionally, those certified are required to participate in continuing education administered overseen by the Department of State Health Services in order to maintain certification. The laser must be used for hair removal only, registered, and in compliance with federal law. No medical benefits for the procedure can be advertised; diagnosis and treatment for medical conditions is strictly prohibited, with a penalty for up to \$5,000 and facility license revocation for violations of the law. The Texas Department of State Health Services Radiation Board will finalize new rules to specify how the law will be administered by March 2010. The new rules are expected to address add the requirement of having a Laser Safety Officer to ensure that proper safety protocols are being followed for all the lasers in a given facility, as well as a requirement that all adverse reactions must be reported. The ASDSA will support the Texas Dermatological Society in advocating for increased physician supervision and oversight requirements.

**Utah:** As of this writing, the Utah Medical Society was developing its strategy for addressing the need for improved regulation of laser medical procedures. Last year, the state legislature passed a law which allows Master Estheticians to perform non-ablative cosmetic medical procedures without onsite physician supervision.

**Vermont:** Last year, the State passed a law requiring the Board of Barbers and Cosmetologists to convene a committee to study the use of laser light and radio frequency devices and provide a report and recommendation to the General Assembly by January 15, 2010. ASDSA SAIDSO Representative Glenn Goldman, MD, sits on the committee, which he has reported has met several times and will recommend to the State Legislature that all lasers, with the exception of hair removal lasers, will require an onsite practitioner (MD, NP, DMD, etc) for supervision, and a substantial number of procedures (vascular laser, ablative resurfacing, etc.) will be restricted to licensed health care provider only.

The committee will also recommend that all providers are required to document evidence of training, compliance with state regulations, etc. along with registering and potential inspection of laser / facility along with laser maintenance and maintenance of certification.

Dr. Goldman expects that licensed aestheticians and licensed electrologists with suitable training will be able to do hair removal laser with the stipulation that a backup provider be available at all times and have a written agreement with the practitioner to provide backup. Similarly, procedures such as nonablative resurfacing may be delegated to such practitioners as long as the MD / provider is onsite and has set the laser.

- Wash.:** The Washington State Department of Health has proposed rules to ensure that the injection of dermal fillers and neurotoxins and the use of prescriptive medical devices for cosmetic purposes are considered the practice of medicine. The rules specify the requisite training, oversight and supervision of physicians and physicians assistants performing cosmetic medical procedures. The public comment deadline is January 14; the ASDSA will provide comment requesting that the rules be consistent with ASDSA patient safety policies.
- Wisc:** The Barbering and Cosmetology Board has filed notice to develop a rule to clarify whom is responsible for providing training to individuals licensed by the Barbering and Cosmetology Board to whom the administration of cosmetic medical procedures have been delegated by a licensed physician. ASDSA will work with the Wisconsin Board of Medicine on the issue.

***Should you have information about more state policy news relating to the regulation of medspas and cosmetic medical procedures, please let us know. The ASDSA is prepared to assist state dermatology societies with advocating for patient safety and has several resources at our disposal. For more information, please contact Director of Advocacy and Public Policy Lisle Soukup Poulsen at (847) 956-9126 or lpoulsen@asds.net.***