THE MONTHLY PUBLICATION FOR CAP MEMBERS

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COOPERATIVE OF AMERICAN PHYSICIANS

Risk Management and Patient Safety News

Adding Medical Spa Services to Your Practice

by Cynthia Mayhan, RN, BSN, PHN

A medical spa is a cross between a traditional day spa and a medical clinic. Medical spas are run under the supervision of a medical doctor. Here in sunny California, cosmetic procedures have always been popular and now, with the rise in popularity of the medical spa business (commonly referred to as med spa), more physicians have opted to expand their practices to include some of the more in-demand cosmetic services.

For many physicians, a venture into cosmetic services is a huge leap from their normal practice and they are finding themselves in unfamiliar territory and with many questions. One question we get frequently at CAP is related to scope of practice in a med spa. In other words, who can do what?

To help our members in this regard, we have compiled a quick reference guide regarding scopes of practice in a physician owned and operated med spa in California.

	Physician	RNP	PA	RN	MA (Unlicensed)	Estheticians/ Cosmetologists (Licensed)	Electrologist (Licensed)
Lasers or Intense Pulse Light Devices	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	No	No
Inject Botox	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	No	No
Cosmetic Fillers	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	No	No
Microdermabrasion-Cosmetic[D]	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	Yes[B-C] Under physician's supervision	No
Microdermabrasion-Medical[E]	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	No	No
Skin Tag/Mole Removal	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	No	No	No	No
Electrolysis	No[F]	No[F]	No[F]	No[F]	No[F]	No[F]	Yes
Chemical Exfoliation-Cosmetic (light or superficial)	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	Yes[B-C] Under physician's supervision	No
Chemical Exfoliation-Medical (medium to deep depth)	Yes	Yes Under physician's supervision	Maybe[A] Under physician's supervision	Yes[B] Under physician's supervision	No	No	No

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A. Physician Assistants may perform dermatologic or cosmetic procedures under the supervision of a licensed physician only if dermatology or cosmetic medicine, respectively, is a part of the supervising physician's customary practice.

B. MD/RNP/PA must first perform an examination of the patient before delegating this task to ensure the patient is an appropriate candidate for the desired treatment.

C. For the esthetician or cosmetologist, physician supervision is not typically required for these procedures; however, in the physician-owned med spa setting, physician supervision of all staff is necessary.

D. Cosmetic microdermabrasion only affects the outermost layer of the skin or the stratum corneum.

E. Medical microdermabrasion penetrates to deep levels of the epidermis (treatments to remove scarring, blemishes, or wrinkles are considered medical treatments).

F. This treatment is not governed by the primary licensing board; additional training and licensure required.

Important Licensing and Coverage Considerations

It is important to remember that while cosmetologists and estheticians are licensed and trained in most cosmetic procedures, their licenses only allow them to perform superficial treatments that do not go beyond the outermost layer of the epidermis. In other words, they are prohibited from penetrating or injecting the skin, using lasers, or performing medical dermabrasion or medical skin peels. This also includes microneedling and dermaplaning, as these procedures are all considered medical treatments. These types of medical treatments may only be performed by a physician or qualified licensed medical professional – an RN, RNP, or PA under the supervision of a physician. Allowing a medical assistant or an esthetician to perform any of these medical treatments is parallel to aiding and abetting the unlicensed practice of medicine.

The most important factor to keep in mind is that the physician is ultimately responsible for supervision of the staff that he or she employs. This includes, but is not limited to, ensuring that staff is appropriately trained and/or licensed for the tasks they are to perform. In addition, the physician must provide direction, guidance, and ongoing evaluation of the staff that he or she oversees. It is good practice for physicians to continually review the supervision requirements of staff as the level and type of supervision varies depending on the individual licensing boards.

It is also very important to confirm CAP medical professional liability coverage for you, your workers, and entity. Under the MPT Agreement, claims are excluded for elected cosmetic procedures (except for the use of pharmaceuticals to treat the epidermal layer of the skin) unless the physician's medical specialty is plastic surgery, dermatology, otolaryngology. Full details of this coverage exclusion are found in Part 1, Section 4.A.20.g of the MPT Agreement, which can be viewed online in the Member's Section of www.capphysicians.com.

If you have or are planning to expand your practice to include med spa services, please contact CAP Member Services at 213-473-8555 or via email at ms@CAPphysicians.com to review your coverage needs to ensure you have adequate liability protection.

Cynthia Mayhan is a Senior Risk Management and Patient Safety Specialist for CAP. Questions or comments related to this article should be directed to cmayhan@CAPphysicians.com.

Sources

Medical Board of California (MD/PA/MA)

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2. http://www.mbc.ca.gov/Licensees/Cosmetic_Treatments_FAQ.aspx
3. http://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/Medical_Assistants/Medical_Assistants_FAQ.aspx
4. https://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/Physician_Assistants_FAQ.aspx

California Board of Registered Nursing (RNP/RN)

5. https://www.rn.ca.gov/pdfs/regulations/npr-b-79.pdf https://www.rn.ca.gov/pdfs/regulations/npr-i-25.pdf

Board of Barbering and Cosmetology (Estheticians/Cosmetologists)

6. https://www.barbercosmo.ca.gov/forms_pubs/publications/faqs.shtml#cs1
7. https://www.barbercosmo.ca.gov/consumers/medspa_factsheet.pdf
8. https://barbercosmo.ca.gov/forms_pubs/publications/exfoliation_safety.pdf

The American Med Spa Association

9. https://www.americanmedspa.org/blogpost/1633466/283265/California-Has-Strict-Laws-Regarding-Laser-Treatments-and-Injectables
10. https://www.americanmedspa.org/page/DEMOStateTreatment?

Call for Applications to the CAP Fellows Program

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In 2002, the CAP Board of Directors and the MPT Board of Trustees created the Fellows Program, a process whereby physicians would be selected to rotate through various committees. These individuals are drawn from the entire CAP membership and reflect the diversity of practices, geography, and experiences of the company. Through their participation, CAP Fellows are introduced to a variety of medical liability issues and enrich the workings of these committees by introducing new viewpoints and perspectives.

This combination of experience and insight helps each committee make better decisions, while training new leaders for the company. The ultimate objective of the Fellows Program is to prepare more physicians to assume expanded leadership roles, but this program also ensures that CAP will always be a physician driven organization that is prepared to handle new and emerging issues in the medical liability arena.

CAP is now accepting applications for the 2020 Fellows program. The program is a year-long commitment that will begin in June.

To learn more about this opportunity and the specific requirements, please send a current CV to CAP's Chief Operating Officer Cindy Belcher at cbelcher@CAPphysicians.com by January 31, 2020.

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Protecting Your Employees and Your Practice

CAP Physicians Insurance Agency, Inc. (CAP Agency) intimately understands medical practice challenges — and how to insure against those challenges most cost effectively. CAP's Specialized Workers' Compensation Program offers comprehensive workers' compensation coverage for medical practices at negotiated low group rates for CAP members.

Whether you have a staff of one or 100, your employees play a big role in your practice's daily success, so when an injury occurs on the job, both productivity and profits suffer.

A strong workers' compensation insurance plan is one of the most important coverages you can have as an employer. When an employee is injured in your practice, workers' compensation insurance will pay for the medical expenses of the injured employee, cover his or her lost income, and protect the practice owner from a lawsuit stemming from the accident.

Medical practices are not immune to frequent workplace accidents, which include overexertion, slips, trips, falls, and injury from contact with objects or equipment. When a claim is filed, you want to trust that your carrier will get your employee the best medical care and get them back to work ASAP. You should not wait for a claim to understand what your workers' compensation policy covers or how the claim will be managed. A claim that is poorly handled has hidden costs to you, your practice, and your patients.

The insurance professionals at CAP Agency can also help you evaluate whether you have adequate business coverage for your practice. If you need to purchase coverage or would like us to get you a competitive quote for insurance you already have, call us at **800-819-0061** or send us an email at **CAPAgency@CAPphysicians.com**.

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Wildfires and Your Property

As wildfires become more frequent and widespread, most California residents are likely to be impacted in some way.

If you live or practice in a high-risk area and have recently been affected by wildfire damage or would simply like to learn more about how to better protect your property, consider the following questions to help you evaluate the current status of your property insurance coverage:

- Do you have adequate insurance protection for your home or practice?
- Has your current property insurance been impacted or canceled because of the recent fires?
- Have you taken the adequate steps to prepare your home or practice in the event of a fire and evacuation?

Visit www.CAPphysicians.com/prepare to learn more about how wildfires are impacting property insurance in California and what you can do to be ready.

Case of the Month

by Gordon Ownby

When the Patient Seeks a 'Favor'

Asking one's physician for a "favor" generally means asking for something outside of what the physician would normally and customarily do. When that favor also involves asking the physician to step outside his or her specialty, the warning bells should start ringing. Pealing, actually.

A 34-year-old construction manager with a history of Klippel-Feil syndrome and scoliosis visited Dr. NS, a neurosurgeon, for a checkup on his original diagnosis and to check on a lump on his lower back. Upon examination and an MRI, Dr. NS noted a congenital fusion of C2, C3, and C4 and a small hemangioma.

During the initial visit, however, the gentleman told Dr. NS that he and his wife, a nurse at the hospital where Dr. NS was on staff, wanted to have a child and, because his wife was cystic fibrosis positive, he wanted to be screened himself. After that discussion, blood was drawn for a "CFTR Intron Poly T" analysis. The results of that test stated: "DNA testing indicates that this individual is negative for the 5T allele in the cystic fibrosis (CF) gene. This assay analyzes only the poly T tract of the CF gene. It does not analyze any mutations commonly associated with a clinical diagnosis of CF."

When the patient returned to Dr. NS five weeks later, Dr. NS advised him of the MRI findings, discussed some increased risk of adjacent level disease at C5-C6, and recommended that he follow up as needed. Though Dr. NS recalls telling the gentleman of the negative cystic fibrosis test result and advising him to follow up with his primary care physician and his wife's OB/Gyn, Dr. NS's records contain no reference to that discussion.

The next year, the patient's wife suffered a miscarriage. Her medical records with her OB/Gyn showed no discussion of cystic fibrosis. When the wife, age 35, was seen for another pregnancy five months later, she indicated on her obstetric questionnaire that she was a cystic fibrosis carrier. An "OB intake" note created two weeks later states the wife was a cystic fibrosis carrier and that her husband's CF screening was negative. Prenatal chromosome screening was requested, but not screening for cystic fibrosis. The family history for genetic conditions on the order form was marked "no" and no referral to a genetic counselor was noted.

A note at 19 weeks by the wife's perinatologist describes the patient as a cystic fibrosis carrier while the husband was not. When an ultrasound revealed an echogenic bowel, the perinatologist recommended amniocentesis, which the wife declined. The perinatologist documented that his patient "may consider genetic counseling and fetal testing." That same day, the genetics center documented the declined amniocentesis and also the offer and declination of cystic fibrosis DNA testing for the husband. Nevertheless, subsequent medical records indicate both parents learned at about this time that they were both carriers for cystic fibrosis. The parents nevertheless did not undertake *in utero* testing.

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Three weeks prior to delivery, an ultrasound revealed an echogenic bowel fetal abnormality, excessive fetal growth, and fetal myocardial hypertrophy. The newborn's diagnosis of cystic fibrosis was made through the newborn screening health program.

In a lawsuit for wrongful life and negligent infliction of emotional distress, the family sued Dr. NS, claiming that he was negligent in performing prenatal genetic testing on the husband, resulting in being erroneously told that he was not a cystic fibrosis carrier and leading to the baby's ultimate condition. The plaintiffs claimed that Dr. NS ordered the wrong test and that the husband did not receive a copy of that initial report. Further, the parents denied that Dr. NS made any referral and claimed that his report to the husband on the negative test was stated definitively.

At his deposition, Dr. NS testified that he agreed to the add-on testing for his patient out of professional courtesy to a hospital colleague, even though he did not recall actually knowing his patient's wife. Dr. NS testified that he did not know how "CFTR" appeared on his prescription order, as he said he left the specific test to be performed up to the lab. Also at his deposition, Dr. NS said he did not recall reading the narrative on the report stating the test results' qualifications.

The family and Dr. NS resolved the litigation informally.

While Dr. NS's ordering a cystic fibrosis test in such circumstances could itself be defensible, the absence of any documented referral or even a discussion on the stated limitations of that test created a significant burden for the neurosurgeon.

Physicians put in similar situations should think hard about whether the best "favor" they can give their patients is to tell them they need to see a different treater.

Gordon Ownby is CAP's General Counsel. Questions or comments related to "Case of the Month" should be directed to gownby@CAPphysicians.com.

Programs Aim to Turn the Tide on Physician Shortages

by Gabriela Villanueva

Among the many topics of debate surrounding healthcare, action on the predictions on physician shortages has started to gather momentum.

This past spring, the Association of American Medical Colleges (AAMC) reported that the United States will see a shortage of up to nearly 122,000 physicians by 2032. Projected shortages include primary care (between 22,100 and 55,200) and specialty care (between 24,800 and 65,800).

A major factor impacting these numbers is the simple dynamic of supply and demand—the demand of a growing aging population in need of more services, an increase in the number of people having access to healthcare, and a supply of physicians unable to keep up with the demand. According to the U.S. Census Bureau, the nation's population is estimated to increase by more than 10 percent by 2032, with those over age 65 increasing by 48 percent. And while that 48 percent will be part of the increase in demand for health services, it will also contribute to the shortage since one-third of all currently active doctors will themselves be older than 65 in the next decade—and ready to retire. With these predictions of physician shortages now available, elected officials are beginning to seek solutions.

In a multi-prong approach, California and its federally elected representatives are taking steps to address predicted physician shortages and their causes, especially when they affect vulnerable populations in the agricultural and rural regions of the state.

One approach has been to help provide incentives in by appropriating $220 million in Prop. 56 (tobacco tax) funds in the 2018 state budget and an additional $120 million in the 2019 May revise of the state budget. In support of these incentives, California has created the CalHealthCares loan repayment program for practicing physicians and residents to use toward student loan forgiveness. Eligible physicians and dentists may apply for up to $300,000 in loan repayments.

Another program funded by Prop. 56 is the CalMedForce which awarded $38 million in its inaugural 2019 cycle and another $40 million in summer 2020 for graduate medical education programs in California. The funding represents over 300 residency slots in programs across the state. A third cycle of funding is expected by the end of 2019.

At the federal level, a coalition of California and Texas House Representatives, primarily from rural districts, introduced in September the Stopping Doctor Shortages Act. The bill aims to close a loophole in federal regulations that inadvertently prevent doctors in California and Texas working for non-profits from qualifying for federal loan forgiveness. The bill is endorsed by the both the California Medical Association (CMA) and Texas Medical Association. CMA President David H. Aizuss, MD, commented: "This bipartisan, technical fix . . . could help California retain or attract as many as 10,000 physicians over the next decade to address critical physician shortages in our state."

With myriad challenges facing healthcare, state and federal efforts to support those who choose careers as physicians through loan forgiveness can only help with growing patient needs.

CalMedForce Program
https://www.phcdocs.org/Programs/CalMedForce

CalHealthCares Program
https://www.phcdocs.org/Programs/CalHealthCares

AAMC Physician Shortage Report
https://bit.ly/2q3G6uX

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