

Purely Cosmetic:

The Perplexing Issues in Reopening Aesthetic and Wellness Practices in the Time of COVID-19



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**SPECIAL THANK YOU TO
LOS ANGELES AESTHETIC AND RECONSTRUCTIVE COVID-19 TASK FORCE**

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“In the middle of a pandemic, nobody needs Botox. To me, that's just kind of an obvious sort of thing.”

–John Mirisch, Beverly Hills City Council (dissenting with the Council’s April 30 decision to lift the moratorium on elective surgeries)

...

38 States

Reopened “non-essential,” elective
care between April 20 and May 25

(AL, AK, AZ, AR, CO, FL, GA, IL, IN,
IA, KS, KY, LA, ME, MD, MN, MS,
MO, MT, NE, NH, NV, NC, ND, OH,
OK, OR, PA, RI, SC, SD, TN, TX, UT,
VT, VI, WV, WY)

2 States

Never Suspended in the First Place

(ID, WI)

10 states

(+ the District of
Columbia)

Still restricting non-essential
elective, aesthetic care

(CA, CT, DC, DE, HI, MA,
MI, NJ, NM, NY, WA)

As complicated as “reopening” is for other healthcare organizations, there are unique issues confronting aesthetic and wellness-focused practices – including confusing government orders and coronavirus bullies....

What do “non-essential” aesthetic and wellness providers need to know, pay attention to, and do to reopen?



Overview

1. How to understand all the pronouncements
 2. Where do aesthetic and wellness practices stand?
 3. New Safety Protocols
 4. Messaging in the Time of Coronavirus
 5. Preparing for Coronavirus Bullies
- Q&A/ Final Thoughts

Aesthetic and wellness providers ...

**Plastic
Surgeons**

**Cosmetic
Dermatologist**

Medspas

Injectables

Massage

IV Nutrition

Anti-Aging

**Hair
Transplants**

...

**Laser
Skin/Hair
Removal**

**Teeth
Whitening**

...

Disclaimers



- This webinar is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice.
- Any individual or entity considering what to do with the information in this webinar should consult an attorney for their particular situation.
- Relevant laws, regulations, and guidance are in flux.



1.

How to understand all the
government
pronouncements

Reconciling Conflicting and Confusing Pronouncements

FEDERAL: de facto standards of care / non-binding guidance on practice of medicine and healthcare professions (except for specific federal laws and regulations, like HIPAA)

STATE: ultimate authority to regulate healthcare practice (but limited enforcement role)

COUNTIES: vested by state with controlling authority. City authority to pass ordinances.
**Enforcement is local

HEALTH PROFESSIONALS: discretion to determine medically appropriate handling

5.7.20: The “Regional Variance” Plan: Power in the Counties’ Hands



State vests
Counties with
jurisdiction
over pace of
reopening...

...subject to public
health prerequisites
and state criteria

Key criteria:

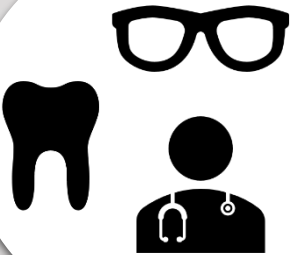
- Epidemiological Stability: <1 case /10K people in last 14 days
- Testing Capacity: 1.5 tests/1K residents daily)
- Containment Capacity: 15 contact tracers/100,000 residents
- Additional criteria: PPE, hospital surge capacity, homeless housing, SNFs, etc.

CA Executive and Public Health Orders



1.1. March 19:

2. Stay-at-home order exempts “Healthcare” as an essential “critical services” sector of infrastructure. Suspension of “elective” and “purely cosmetic” procedures



2. May 8:

Stage 2 roadmap suggests reopening of “elective procedures” while noting that “non-essential medical care like eye exams, teeth cleaning, and elective procedures must/should be canceled or rescheduled.” No guidance or criteria on whether a procedure is non-essential.

CA Executive and Public Health Orders



1.3. April 22:

2. Elective Procedures finally encouraged elective and key preventive care services, such as colonoscopies, that had been delayed to resume.



1.4. April 26:

2. Focus on resuming elective and non-urgent procedures including physician offices and health centers, dental services, among others.



1.5. To date, no clear guidance on “purely cosmetic” and “non-essential” services.

Key Analysis

Identify all services

- Is there a clear and specifically applicable state directive limiting
- Reopening of all services? Local directive?
- Are there particular services that are specifically limited by state or local directive?

Identify the broader category

- Can the business be fit into permitted category (*e.g.* preventive or wellness services)?

Should any services be delayed? Is physician discretion appropriate?



2.

Where do aesthetic and
wellness practices stand?

California's 1st 3 (of 5) Stage Risk-based Reopening

Phase 1	Phase 2	Phase 3
Ongoing since 3.19.20 (winding down)	5.7.20: Roll-out underway	TBD – Aug/Sept 2020
Safer at Home Order Planning for Recovery	Lower-risk businesses	Higher-risk businesses
<ul style="list-style-type: none">• Limited to “Essential Healthcare”• Moratorium on “Elective” and “Non-essential” and “Purely Cosmetic” care.	<ul style="list-style-type: none">• Elective procedures• Preventive and wellness care permitted• New safety requirements implemented	<ul style="list-style-type: none">• Some non-essential healthcare still delayed?• Purely cosmetic?• Tattoo• Massage• Gyms/fitness studios• Nail salons

Key Questions

- **Is the business medical in nature?** Under the oversight of a physician or other health professional (*e.g.* chiropractor, physical therapist)?
- **If some services are not medical**, does the service involve a wellness or preventive purpose?
- **Has the responsible health professional determined that the service is**
 - medically necessary
 - appropriate, or
 - beneficial to the patient (*e.g.* addressing an emotional or mental health need of the patient (*e.g.* self-confidence, making person feel better about themselves or overall)?

Ironies, Confusion, and Questions

- Certain services (*e.g.* massage) are impermissible in the absence of a health professional but are permissible if performed under oversight of physicians or chiropractors in context of preventive health care services).
- Can a service (*e.g.* filler injection) be “purely cosmetic” if performed by a physician or non-physician professional (PA or NP)?
- When do aesthetic procedures serve a medical purpose: Addressing emotional pain and distress; Addressing feeling of abnormality

Process

1.1. City Attorneys vetting complaints.

2. Law enforcement visiting for information.

3. Warnings/instructions to close to businesses deemed inappropriately open.

4. Citations issued rarely and avoidable with dialogue over right to reopen.

5. No involvement by professional licensing boards.

6. No instances of criminal liability absent fraud (*e.g.* scam product sales)



3. Safety Protocols

Key Planning Components

Adopt Safety Protocols	Implement Communication Plan	Adapting to Patient Expectations	Plan for Business Challenges
<ul style="list-style-type: none">• Detailed risk assessment• Site-specific protection plan:<ul style="list-style-type: none">• Screening• PPE• Cleaning• Logistics• Quarantining	<ul style="list-style-type: none">• Reassuring the workforce and patients• Operational changes• Guidance on COVID-19 risks, testing, treatment	<ul style="list-style-type: none">• Consents• Ongoing telehealth usage• Addressing anxiety and other behavioral challenges	<ul style="list-style-type: none">• Timing? Slow start on patient volume• Managing cash flow, funding, AP, AR• Negotiating expenses/vendors



Screening: Active Protocol for Staff and Patients

Self-monitoring (staff) / Active monitoring of patients

- Staff taking own temperature at least 2x/day (home and work)
- Remain alert for onset of symptoms
- Report if symptoms make medical evaluation appropriate
- On or shortly before client arrival, consider COVID-19 attestation or ask: Are you experiencing any of the following symptoms? Fever, cough, shortness of breath, sore throat, chills, repeated shaking with chills, muscle pain, headache, or new loss of taste or smell? Have you been in contact with someone known to have COVID-19? Have you recently traveled by airplane or cruise ship?
- Actively measure individuals' temperatures. A fever is 100°F (99.6 if age 65+)

Active Screening Protocol for Staff, Patients, Visitors



Screening and Monitoring

High Risk:

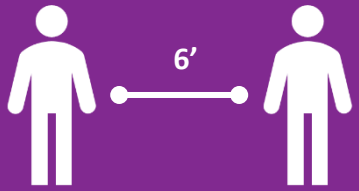
- Longer exposure/close contact w/symptomatic person
- coughed on w/o mask/eye protection

Medium Risk:

Close contact w/sick person.
Unprotected contact w/droplets.
Poor hand hygiene.

Low Risk:

No prolonged close contact with anyone sick.
Incidental exposure only. Followed infection control protocols, precautions re: contact, droplets.



Physical Distancing

- Keep using telehealth (reduce in-person volume)
- Limit visits to blood draw, injection, essential in-person exams
- Reconfigure workforce for 6 foot spacing
- Remote check-in via dedicated cellphone: text on arrival + to come in
- Pre-Screen patient condition... Separate sick and well patients
- Direct patients to go straight to private exam room
- Limit maximum patient capacity in office at one time
- Restrict guests/visitors (unless necessary to directly support a patient's health + wellness or for compassionate purposes)
- One Direction? Set entrance/exit, foot traffic to minimize interaction
- Special hours for vulnerable patients
- Remove magazines, toys, coffee – infectable items



Sterilization/ Cleaning

- Access to alcohol-based hand rub (ABHR) (Use soap if unavailable.)
- Reinforce hand-hygiene: posted handwashing protocols, tissue rules, no-touch receptacles for disposal
- Max out time of exam rooms between usage, if possible to air out.
- Increase maintenance standards throughout all public access points
- Disinfection protocols: thoroughly disinfect touched surfaces (tables, counters, doorknobs, switches, handles, desks, toilets, faucets, sinks) after use + throughout the day any with products labeled effective vs rhinoviruses/human coronaviruses (EPA anti-viral pathogen grade)
- Maintain inventory of cleaning supplies, wipes, towels, *etc.*
- Post federal, state and local advisories conspicuously.
- Heightened equipment sterilization protocols
- Clean rooms, bathrooms immediately after use by infected person

**Quarantining:
What to do if
staff is exposed?**

Until we have more widespread point of care testing available ...

- Any symptoms: Stay home.
- High Risk exposure: Discuss with Management. Stay home if possible (subject to organizational needs).
- Low risk: Continue to work as long as asymptomatic.
- Report new symptoms ASAP (fever/cough/shortness of breath/sore throat/chills/repeated shaking with chills/muscle pain/headache/new loss of taste or smell).
- Consider your exposure to other people who become symptomatic.



**Maintaining (and
documenting) a Safe
Workplace**

1. Assess OSHA risk level of COVID-19 exposure (next slide)
2. Train employees + enforce policies on proper workplace sanitation/hygiene
3. Provide employees with appropriate PPE (*e.g.*, face coverings, gloves, etc.) and train on use, maintenance, and cleaning
4. Appropriate administrative controls (*e.g.* temporary shutdown of certain, nonessential activities, staggered shifts, limited patient access, direct sick workers to stay home, distancing)
5. Appropriate engineering controls (*e.g.*, exhaust or ventilation systems, physical barriers or partitions, etc.)
6. Investigate and address, if necessary, internal complaints from employees about alleged workplace hazards

Key: Demonstrate good faith efforts to reduce/eliminate workplace hazards with *contemporaneous documentation + implementation* to rebut employee claims/refusal to return



**Key
documentation**

- **Risk Assessment and Protection Plan (with Safety Protocols)**
- **COVID-19 Certifications (Staff and Patients)**
- **Staff Acknowledgments**
- **Informed Consents**
- **Instructions for Contact Tracing**
- **NOT Advance Liability Waivers**

A grayscale electron micrograph of a coronavirus particle, showing its characteristic spherical shape and surface covered in numerous small, rounded protrusions (spikes). The particle is the central focus, with several other, less distinct particles visible in the background.

4.

Messaging in the Time of Coronavirus

Adjusting to the crisis and rapid change

Professionally, Personally, Collectively – and with Continued Uncertainty



Effective Communication & Engagement

- **Facilitate engagement with patients, staff**
- **Systematize efficient dissemination/implementation**
 - Updates on your organization's resources
 - Timely alerts on new protocols
 - Educational content from trusted sources-empower ppl to engage w/care plans + understand role in limiting spread
 - Maintain person-centered approach to care in communication with staff, patients, patient representatives and family members re: patients' evolving needs during the crisis, treatment goals + how new protocols change care delivery and what life is like.



Key Messaging Points

- **Operating under physician oversight**
- **Operating in accordance with public health directives**
- **Offering only medically appropriate services**
- **Deferring non-medical services**
- **Adoption of safety protocols**

Adjusting to the crisis and rapid change

Professionally, Personally, Collectively – and with Continued Uncertainty



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**Being Prepared
for Questions**

To foreclose questions from city attorneys and law enforcement in the face of confusing guidance, consider value of:

- **Physician/health professional letter explaining reopening**
- **Attorney opinion letter**

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5. Preparing for Coronavirus Bullies



Welcome to
the era of the
coronavirus
bully...

“Coronavirus Bully”: A person who is confrontational, makes complaints and reports, or trolls the social media of individuals and businesses because of displeasure with their perceived level of COVID-19 compliance.

- **People policing other people’s behavior**
- **Badmouthing anyone making decisions they dislike**
- **Competitors who are unhappy others have reopened**
- **City attorneys, law enforcement reporting surges in complaint volume**



Strategies for dealing with coronavirus bullying...

- 1. Be prepared: Have explanatory materials, letters ready, and explain the basis for reopening to authorities.**
 - Address confusion over physician/health professional oversight, medical versus non-medical services. Emphasize physician discretion**
- 2. Do not respond to or be intimidated by bullies. They are facet of this moment in time. Consider hiding comments from haters.**
- 3. Be respectful of people who continue to be nervous.**
- 4. Consider screening process for new patients to avoid bullies.**



6. Q&A Final Thoughts



Takeaways

- Period of massive confusion over actual content of government orders, coupled with bullying by people who want the lockdown to continue for epidemiological reasons (irrespective of economic cost and behavioral health consequences)
- Significant leeway for medical providers to operate subject to understanding rules, careful planning, clear communication, and exercise of physician discretion
- Authorities are deferential and not interfering with appropriately exercised physician discretion

Questions?



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