

AMENDED IN SENATE SEPTEMBER 3, 2009

AMENDED IN SENATE AUGUST 19, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1116**

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**Introduced by Assembly Member Carter**

February 27, 2009

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An act to add Sections 1638.2 and 2259.8 to the Business and Professions Code, relating to cosmetic surgery.

LEGISLATIVE COUNSEL'S DIGEST

AB 1116, as amended, Carter. Cosmetic surgery.

Existing law, the Dental Practice Act, establishes the Dental Board of California in the Department of Consumer Affairs, which licenses dentists and regulates their practice, including dentists who hold a permit to perform oral and maxillofacial surgery. Existing law, the Medical Practice Act, establishes the Medical Board of California in the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act requires specified disclosures to patients undergoing procedures involving collagen injections, and also requires the Medical Board of California to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would enact the Donda West Law, which would prohibit the performance of an elective cosmetic surgery procedure on a patient unless, within ~~48 hours~~ *30 days* prior to ~~surgery~~ *the procedure*, the patient has received an appropriate physical examination by, and has

received written clearance for the procedure from, a licensed physician and surgeon, a certified nurse practitioner, or a licensed physician assistant, as specified, or, as applied to *an* elective facial cosmetic surgery *procedure*, a licensed dentist or licensed physician and surgeon. The bill would require the physical examination to include the taking of an appropriate medical history *and to be confirmed on the day of the procedure*. The bill would also provide that a violation of these provisions would not constitute a crime.

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
 2 Donda West Law.  
 3 SEC. 2. Section 1638.2 is added to the Business and Professions  
 4 Code, to read:  
 5 1638.2. (a) Notwithstanding any other provision of law, a  
 6 person licensed pursuant to Section 1634 who holds a permit to  
 7 perform elective facial cosmetic surgery issued pursuant to this  
 8 article may not perform elective facial cosmetic surgery on a  
 9 patient, unless the patient has received, ~~within 48 hours prior to~~  
 10 ~~surgery~~ *30 days prior to the elective facial cosmetic surgery*  
 11 *procedure, and confirmed as up-to-date on the day of the*  
 12 *procedure*, an appropriate physical examination by, and written  
 13 clearance for the procedure from, either of the following:  
 14 (1) A licensed physician and surgeon.  
 15 (2) A person licensed pursuant to Section 1634 who holds a  
 16 permit to perform elective facial cosmetic surgery issued pursuant  
 17 to this article.  
 18 (b) The physical examination described in subdivision (a) shall  
 19 include the taking of an appropriate medical history.  
 20 (c) *An appropriate medical history and physical examination*  
 21 *done on the day of the procedure shall be presumed to be in*  
 22 *compliance with subdivisions (a) and (b).*  
 23 (e)  
 24 (d) A violation of this section shall not constitute a crime.  
 25 SEC. 3. Section 2259.8 is added to the Business and Professions  
 26 Code, to read:

1 2259.8. (a) Notwithstanding any other provision of law, ~~a~~ *an*  
2 *elective* cosmetic surgery procedure may not be performed on a  
3 patient unless the patient has received, within ~~48 hours prior to~~  
4 ~~surgery~~ *30 days prior to the elective cosmetic surgery procedure,*  
5 *and confirmed as up-to-date on the day of the procedure,* an  
6 appropriate physical examination by, and written clearance for the  
7 procedure from, any of the following:

8 (1) The physician and surgeon who will be performing the  
9 surgery.

10 (2) Another licensed physician and surgeon.

11 (3) A certified nurse practitioner, in accordance with a certified  
12 nurse practitioner's scope of practice, unless limited by protocols  
13 or a delegation agreement.

14 (4) A licensed physician assistant, in accordance with a licensed  
15 physician assistant's scope of practice, unless limited by protocols  
16 or a delegation agreement.

17 (b) The physical examination described in subdivision (a) shall  
18 include the taking of an appropriate medical history.

19 (c) *An appropriate medical history and physical examination*  
20 *done on the day of the procedure shall be presumed to be in*  
21 *compliance with subdivisions (a) and (b).*

22 ~~(e) "Cosmetic~~

23 (d) *"Elective cosmetic surgery"* means an elective surgery that  
24 is performed to alter or reshape normal structures of the body in  
25 order to improve the patient's appearance, including, but not  
26 limited to, liposuction and elective facial cosmetic surgery.

27 ~~(d)~~

28 (e) Section 2314 shall not apply to this section.