

HOUSE No. 2121

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to comanagement of ocular surgical patients..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 5 of chapter 112 of the General Laws as appearing in the 2004
2 official edition is hereby amended by adding at the end thereof the following new subsection:

3 “5M. Standards for Physicians Performing Ocular Surgery

4 A surgeon who is scheduled to perform eye surgery shall personally examine the
5 patient within two months prior to the surgery and shall be personally responsible for the
6 decision to operate, and for the patient’s care in the first 24 hours, or up to and including the first
7 post operative visit. The surgeon may delegate the responsibility for the second 24 hours of
8 postoperative care for the patient to another person if the delegation occurs through a co-
9 management agreement that meets the requirements of this section and the person to whom the
10 responsibility is delegated is an ophthalmologist or optometrist licensed under the provisions of
11 this chapter.

12 A co-management agreement may be entered into only when:

13 (1) the distance the patient would have to travel to the regular

14 office of the operating surgeon would result in an unreasonable hardship for
15 the patient, as determined by the patient;

16 (2) the surgeon will not be available for postoperative care of
17 the patient as a result of the surgeon's personal travel, illness, or scheduling difficulties,
18 or

19 (3) other justifiable circumstances exist, as provided under
20 regulations of the board;

21 (4) the agreement provides a fee to the person to whom the
22 care is delegated that does not exceed fair market value of the services provided by the
23 person;

24 (5) the surgeon confirms in writing that the person to whom the care is delegated is
25 qualified to treat the patient during the postoperative period and is licensed or certified to
26 provide the care if license or certification is required by law;

27 The details of the agreement shall be disclosed to the patient in writing before surgery is
28 performed, and shall include:

29 (A) the reason for the delegation;

30 (B) the qualifications, including licensure or certification, of
31 the person to whom the care is delegated;

32 (C) the financial details about how the surgical fee will be

33 divided between the surgeon and the person who provides the postoperative
34 care;

35 (D) a notice that, notwithstanding the delegation of care, the
36 patient may receive postoperative care from the surgeon at the patient's request
37 without the payment of additional fees;

38 (E) a statement that the surgeon will be ultimately responsible
39 for the patient's care until the patient is postoperatively stable;

40 (F) a statement that there is no fixed date on which the patient
41 will be required to return to the referring health care provider; and

42 (G) a description of special risks to the patient that may result from the comanagement
43 agreement.

44 The agreement may not take effect unless there is a written statement in the surgeon's
45 file and in the files of the person to whom postoperative care is being delegated that is signed by
46 the patient in which the patient consents to the comanagement agreement and in which the
47 patient acknowledges that the details of the comanagement agreement have been explained and
48 are understood.

49 A surgeon may not enter into a co-management agreement governed by this section if the
50 agreement:

51 (1) exists as a matter of routine policy rather than on a case-by-case basis;

- 52 (2) is not clinically appropriate for the patient;
- 53 (3) is made with the intent to induce surgical referrals; or
- 54 (4) is based on economic considerations affecting the surgeon.

55 An ophthalmologist or optometrist may not require, as a condition of making referrals to
56 a surgeon, that the surgeon must enter into a co-management agreement with the ophthalmologist
57 or optometrist for the postoperative care of the patient who is referred.

58 An ophthalmologist or optometrist to whom postoperative care is delegated under a co-
59 management agreement governed by this section may not further delegate the care to another
60 person, regardless of whether the other person is under the supervision of the ophthalmologist or
61 optometrist.

62 It is an affirmative defense to a prosecution under this section or in a disciplinary
63 proceeding for violation of this section that the surgeon delegated postoperative care of a patient
64 because of unanticipated circumstances that were not reasonably foreseeable by the surgeon
65 before the surgery was performed. A physicians failure to comply with the provisions of this
66 section shall constitute grounds for disciplinary action under section 5 of this chapter.