

# SENATE . . . . . No. 836

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Joan M. Menard***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to medical spas..

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan M. Menard</i>	<i>First Bristol and Plymouth</i>	<i>11/7/2023</i>
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>	
<i>Peter J. Koutoujian</i>	<i>10th Middlesex</i>	

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[Pin Slip]

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to medical spas..

*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. Chapter 111 of the General Laws as appearing in the 2006 Official Edition  
2 is hereby amended by adding the following sections: --

3           MEDICAL SPAS

4           Section 221. For the purposes of sections 221 to 226, inclusive, the following words  
5 shall, unless the context clearly indicates otherwise, have the following meanings:

6           “Actively practicing,” providing services or on-site supervision at the office location for a  
7 majority of the weekly clinical practice time of the practitioner.

8           “Clinical director,” a physician or nurse licensed under the provisions of chapter 112 who  
9 is responsible for working with a site director to establish and implement policies and protocols  
10 related to level II procedures at a medical spa.

11          “Commissioner,” the Commissioner of Public Health.

12          “Department,” the Department of Public Health.

13 “Exempt private office practice,” a facility that provides medical aesthetic procedures,  
14 which is wholly owned and controlled by one or more of the practitioners who actively practice  
15 at that location.

16 “Laser and light-based hair removal,” procedures to remove hair from the human body  
17 using laser devices or other light-based devices, and which may be performed by a physician,  
18 physician’s assistant, nurse, electrologist or advanced aesthetician licensed to practice in  
19 Massachusetts.

20 “Level I facility,” any entity that provides only Level I procedures and that is licensed by  
21 either the board of registration of electrologists or the board of registration in cosmetology.

22 “Level I procedures,” those procedures within the scope of practice of a licensed  
23 electrologist, cosmetologist or aesthetician as defined by and performed under the regulatory  
24 authority and jurisdiction of the board of registration of electrologists or the board of registration  
25 in cosmetology.

26 “Level II procedures,” those procedures defined by the commissioner in regulation,  
27 which shall be minimally invasive and carry minor to moderate risk to patients.

28 “Level III procedures,” those procedures defined by the commissioner in regulation,  
29 which shall be more invasive and of greater risk than Level II procedures, and which shall be the  
30 practice of medicine or nursing.

31 “Medical aesthetic procedures,” Level II and Level III procedures, as defined by the  
32 commissioner by regulation.

“Medical spa,” any entity, however organized, whether conducted for profit or not for profit, that is advertised, announced, established, or maintained for the purpose of providing medical aesthetic procedures. “Medical spa” shall not include a practice wholly owned and controlled by one or more practitioners if at least one of the owners is actively practicing at each office location. “Medical spa” shall not include a clinic licensed pursuant to section 51 of chapter 111.

“Medical director,” a physician licensed under the provisions of chapter 112 who is responsible for working with a site director to establish and implement policies and protocols related to prescriptive practice and performance of medical aesthetic procedures at a medical spa licensed to provide Level III procedures.

“Practitioner,” a physician, physician’s assistant, nurse, electrologist or advanced aesthetician licensed to practice in Massachusetts.

“Site director,” a physician or nurse licensed and in good standing under the provisions of chapter 112 who is employed full-time at a medical spa and responsible for the medical spa’s compliance with applicable laws and regulations.

Section 222. The department shall issue for a term of two years, and shall renew for like terms, a license, subject to revocation by it for cause, to any medical spa that meets the requirements of the department established in accordance with its rules and regulations; provided, however, that the department shall inspect each medical spa at least once a year. The department shall designate a medical spa as a Level II facility, a Level III facility or a Level II and III facility, depending on the procedures that are offered.

54           Section 223. (1) No entity, however organized, whether conducted for profit or not for  
55   profit, may provide medical aesthetic services under a name that includes the words “medical  
56   aesthetics,” “medical spa,” the word “medical” or any derivative thereof or words to similar  
57   effect unless it is licensed pursuant to section 222. (2) A licensed medical spa may include a  
58   Level I facility, but the Level I facility shall maintain a separate license subject to the jurisdiction  
59   and requirements of the board of registration of electrologists or board of registration in  
60   cosmetology. (3) Each medical spa shall maintain records of each patient’s visit for a minimum  
61   of seven years. (4) Any practitioner who provides services in a medical spa shall have sufficient  
62   and appropriate training, continuing education, and supervision as required by his or her  
63   licensing board. (5) Each entity that meets the definition of “medical spa” that is in operation on  
64   the effective date of this act must (a) register with the department within 120 days of the  
65   effective date of this act and (b) must submit an application for licensure to the department  
66   within one year of the effective date of regulations promulgated by the commissioner pursuant to  
67   section 224.

68           Section 224. (1) No person may perform a medical aesthetic procedure except to the  
69   extent authorized by his or her license issued under the provisions of chapter 112. (2) No  
70   practitioner may perform a medical aesthetic procedure in a location that is not a licensed  
71   medical spa, an exempt private office practice, or a hospital or clinic licensed pursuant to section  
72   51 of chapter 111. (3) Any practitioner who provides medical aesthetic services, whether in a  
73   licensed medical spa, an exempt private office practice, or a hospital or clinic licensed pursuant  
74   to section 51 of chapter 111 shall have sufficient and appropriate training, continuing education,  
75   and supervision as required by his or her licensing board. This section shall not apply to students

enrolled in professional schools for professions permitted to perform medical aesthetic procedures as part of their training.

Section 225. A medical spa licensed to provide level II procedures shall have a clinical director and a site director, which may be the same person. The clinical director shall have sufficient and appropriate training, as the department shall define by regulation, to perform and supervise any Level II procedures performed in the medical spa. The clinical director shall be physically present in the medical spa for a period of time equal to at least ten percent of the hours of operation of the medical spa each month and shall be available to all staff for consultation and referral as needed. The clinical director or another experienced nurse or physician with appropriate training shall perform all patient assessments for level II procedures and shall make appropriate referrals to a collaborating physician as necessary. The site director shall have clinical training and experience that is sufficient to perform and supervise the performance of any Level II procedures performed in a medical spa for which he or she serves as site director. The site director shall be responsible for a site-based credentialing process for all licensed professionals in the medical spa that includes requirements related to professional licensure, training, continuing education, and experience, and for ensuring that all licensed professionals in the medical spa have adequate back-up coverage as needed. Each site director must be physically present in the medical spa during the hours of operation of the medical spa or shall designate an equally qualified substitute if he or she is unable to be present in a medical spa at any particular time.

Section 226. A medical spa licensed to provide level III procedures shall have a medical director and a site director, which may be the same person. The medical director shall have sufficient and appropriate training, as the department shall define by regulation, to perform and

99 supervise any Level III procedures performed in the medical spa. The medical director shall be  
100 physically present in the medical spa for a period of time equal to at least ten percent of the hours  
101 of operation of the medical spa each month and shall be available to all staff for consultation and  
102 referral as needed. The site director shall have clinical training and experience that is sufficient  
103 to perform and supervise the performance of any Level III procedures performed in a medical  
104 spa for which he or she serves as site director. The site director shall be responsible for a site-  
105 based credentialing process for all licensed professionals in the medical spa that includes  
106 requirements related to professional licensure, training, continuing education, and experience,  
107 and for ensuring that all licensed professionals in the medical spa have adequate back-up  
108 coverage as needed. Each site director must be physically present in the medical spa during the  
109 hours of operation of the medical spa or shall designate an equally qualified substitute if he or  
110 she is unable to be present in a medical spa at any particular time.

111       Section 227. The commissioner shall promulgate rules and regulations to implement the  
112 provisions of sections 221-226. Notwithstanding any general or special law to the contrary, the  
113 commissioner shall not be required to receive the approval of the public health council prior to  
114 promulgation of such regulations. The regulations shall incorporate to the extent possible the  
115 recommendations of the medical spa task force created pursuant to St. 2006, c. 81 and shall  
116 include but not be limited to, a list of medical aesthetic procedures, classified as Level II and  
117 Level III procedures, that may be performed in medical spas; the appropriate levels of training  
118 for practitioners in medical spas; the requirements and duties of a medical spa medical director;  
119 the requirements and duties of a medical spa site director; the appropriate levels of supervision  
120 required in medical spas; evidence of responsibility and suitability to operate a medical spa;  
121 retention of records; emergency procedures; staffing requirements; sale of goods within a

medical spa, and physical plant requirements. Nothing in this section shall be construed to grant authority to the commissioner to limit or diminish the authority or jurisdiction of a licensing board under the provisions of chapter 112 to define the scope of practice for its licensees or investigate or discipline a licensee practicing under the provisions of this section.

Section 228. There shall be a medical spa advisory committee, composed of one representative each from the boards of registration in medicine, nursing, electrology and cosmetology appointed by each board's executive director, one representative from the department appointed by the commissioner, one physician appointed by the board of registration in medicine, one nurse appointed by the board of registration in nursing, one electrologist appointed by the board of registration of electrologists, one licensed cosmetologist appointed by the board of registration in cosmetology, one advanced aesthetician appointed by the board of registration in cosmetology, one representative from a medical equipment manufacturer appointed by the department, and one owner of a medical spa licensed by the department, and appointed by the department. The commissioner shall appoint one member as chairman. The members shall serve staggered three-year terms. At the end of each member's term, he or she may continue to serve until his or her successor is appointed and qualified. The committee shall meet as frequently as the chairman deems necessary, but not less than once each year. The committee shall advise the commissioner on the appropriate classification of new medical aesthetic procedures and technologies, and on other matters pertaining to the appropriate regulation of medical spas. The committee shall also have the right to review and comment upon all rules, regulations and guidelines issued by the commissioner at least 60 days before the date such rules, regulations or guidelines become final, but in the case of emergency regulations the time period shall be a reasonable time under the circumstances. The committee may also make



145 recommendations as to matters concerning medical aesthetic procedures to the board of  
146 registration in medicine, the board of registration in nursing, the board of registration of  
147 electrologists or the board of registration in cosmetology and may periodically advise the joint  
148 committee on public health care on actions, including legislation, that may improve the quality of  
149 medical aesthetics or medical spas.

150           Section 229. Any person who operates an unlicensed medical spa shall for a first offense  
151 be punished by a fine of not more than five hundred dollars, and for a subsequent offense by a  
152 fine of not more than one thousand dollars or by imprisonment for not more than two years. A  
153 separate and distinct offense shall be deemed to have been committed on every day during which  
154 any violation continues after written notice thereof by the department. The commissioner shall  
155 report to the attorney general any violation of section 222. Any fines collected pursuant to this  
156 provision shall be deposited into the account established by the Department for the regulation of  
157 medical spas.

158           Section 230. Whenever the department finds upon inspection, or through information in  
159 its possession, that any licensed medical spa is not in compliance with a requirement established  
160 under sections 221-226 or the regulations promulgated thereunder, the department may order the  
161 licensee to correct such deficiency. Every such correction order shall include a statement of the  
162 deficiencies found, the period prescribed within which the deficiency must be corrected, and the  
163 provisions of law relied upon. The department may assess the person ordered to correct  
164 deficiencies no less than \$1,000 and not more than \$10,000 per deficiency for each day the  
165 deficiency continues to exist beyond the date prescribed for correction. Within seven days of  
166 receipt, the affected person may file a written request with the department for administrative  
167 reconsideration of the order or any portion thereof. Any fines collected pursuant to this

provision shall be deposited into the account established by the Department for the regulation of medical spas.

SECTION 2. Section 87EEE of chapter 112 of the General Laws as appearing in the 2006 Official Edition is hereby amended as follows:

For the purposes of sections eighty-seven FFF to eighty-seven OOO, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

“Board”, the board of registration of electrologists established under section fifty-eight of chapter thirteen.

“Electrolysis”, the method of removing hair from the human body by the application of an electrical or radiofrequency current to the hair-papilla by means of a needle or any other instrument or device to cause decomposition, coagulation or dehydration of the hair-papilla and thus permanently remove the hair. Said definition shall also include, but not limit other licensed professions from performing, the removal of hair from the human body by use of lasers or intense pulse light devices.

SECTION 3. Chapter 112 of the General Laws as appearing in the 2006 Official Edition is hereby amended by inserting after section 87GGG the following section:

Section 87GGG ½. A licensed electrologist who was licensed prior to the inclusion of laser or intense pulse light devices in the educational curriculum shall not be allowed to use said devices prior to meeting educational and examination requirements as established by the Board. The use of said devices by a licensed electrologist who has not met the Board requirements shall be deemed practice outside the scope of the license issued to that individual, unprofessional

189 conduct pursuant to G.L. c. 112, §87III; such uses may thus subject the licensee to disciplinary  
190 action as determined by the Board.

191 SECTION 4. Chapter 112 of the general laws as so appearing is hereby further amended  
192 by inserting after section 87DD the following section: --

193 Section 87DD1/2. A medical spa licensed pursuant to section 222, an exempt private  
194 office practice of a physician, or a hospital or clinic licensed pursuant to section 51 of chapter  
195 111 shall not be deemed to be an aesthetic shop for the purposes of section 87DD of chapter 112  
196 nor shall the board of registration in cosmetology have any jurisdiction over the physical  
197 premises of a medical spa licensed pursuant to section 222, an exempt private office practice of a  
198 physician, or a hospital or clinic licensed pursuant to section 51.

199 SECTION 5. Said chapter 112 of the general laws as so appearing is hereby further  
200 amended by adding at the end thereof the following section:-

201 Section 237. Nothing in this chapter shall limit the ability of employees or authorized  
202 representatives of a manufacturer of a device used for medical aesthetic procedures from  
203 engaging in one or more of the following: demonstrating, evaluating, adjusting, measuring,  
204 designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering  
205 a device used to provide medical aesthetic procedures.

206 SECTION 6. Notwithstanding the provisions of section 87GGG 1/2 of chapter 112 of the  
207 General Laws, for a period of one year after the effective date of said section, a licensed  
208 individual shall not be required to obtain additional education to qualify to take an examination  
209 to allow the use of laser and intense pulse light devices if he or she can demonstrate to the Board  
210 that he or she has had training and actual experience in the use of laser and intense pulse light

211 devices. Such training and experience shall only be credited if the Board determines, in its  
212 discretion, that the licensee has adequate knowledge to safely and effectively utilize laser and  
213 intense pulse light devices.