

HOUSE No. 1473

The Commonwealth of Massachusetts

PRESENTED BY:

Brian S. Dempsey

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 to the disclosure of postoperative ocular care..

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------|-------------------|------------------|
| <i>Brian S. Dempsey</i> | <i>3rd Essex</i> | <i>1/20/2011</i> |

HOUSE No. 1473

By Mr. Dempsey of Haverhill, a petition (accompanied by bill, House, No. 1473) of Brian Dempsey relative to the disclosure of postoperative ocular care. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2039 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to the disclosure of postoperative ocular care..

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 112 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by adding the following new section:-

3 Chapter 12 DD: Postoperative Care After Eye Surgery

4 (a) If a surgeon delegates the responsibility for postoperative care for a patient for
5 whom the surgeon performed eye surgery, the surgeon may do so only by entering into a
6 comanagement agreement with an ophthalmologist or optometrist under the provisions of this
7 section.

8 (b) Except as provided in section (c), a surgeon who performs eye surgery shall be
9 physically available to the patient for postoperative care in the community in which the operation
10 was performed for at least 48 hours after the surgery is completed.

11 (c) A surgeon who performs eye surgery may delegate the responsibility for the first
12 48 hours of postoperative care for the patient to another person if the delegation occurs through a
13 management agreement that meets the requirements of this section and the person to whom the
14 responsibility is delegated is

15 i. An optometrist; or

16 ii. An ophthalmologist

17 (d) In order to satisfy the requirements of this section, a comanagement agreement for
18 post operative care of a patient must meet the following requirements:

19 i. The agreement may only be entered into
20 when

21 1. the distance the patient would have to travel to the regular office of the operating
22 surgeon would result in an unreasonable hardship for the patient, as determined by the patient;

23 2. the surgeon will not be available for postoperative care of the patient as a result of
24 the surgeon's personal travel, illness;

25 3. other justifiable circumstance exist, as determined by the Board of Registration in
26 Medicine

27 ii. The agreement may not provide a fee to the
28 person to whom the care is delegated that does not reflect fair market value of the services
29 provided by the person;

30 iii. The agreement may be entered into only if
31 the surgeon confirms that the person to whom the care is delegated is qualified to treat the patient
32 during the postoperative period and is licensed or certified to provide the care, if required by law;

33 iv. The agreement may not take effect unless
34 there is written statement in the surgeon’s file and in the files of the person to whom
35 postoperative care is being delegated that is signed by the patient in which the patient states the
36 patient’s consent to the comanagement agreement and in which the patient acknowledges that the
37 details of the comanagement agreement have been explained to the extent required under (5) of
38 this subsection;

39 v. The details of the agreement shall be
40 disclosed to the patient in writing before surgery is performed; the disclosure required under this
41 paragraph must include:

- 42 a. The reason for delegation;
- 43 b. The qualifications, including licensure or certification, of the person to whom the
44 care is delegated
- 45 c. The financial details about how the surgical fee will be divided between the
46 surgeon and the person who provides the postoperative care
- 47 d. A notice that, notwithstanding the delegation of care, the patient may receive
48 postoperative care for the surgeon at the patient’s request without the payment of additional fees;
- 49 e. A statement that the surgeon will be ultimately responsible for the patient’s care
50 until the patient is postoperatively stable;

51 f. A statement that there is no fixed date on which the patient will be required to
52 return to the referring health care provider; and

53 g. A description of special risks to the patient that may result from the comanagement
54 agreement.

55 (e) A surgeon may not enter into a comanagement agreement governed by this section:

56 a. Under which two or more physicians or optometrists agree to comanage patients of
57 the surgeon as a matter of routine policy rather than on case by case basis;

58 b. That is not clinically appropriate for the patient

59 c. That is made with the intent to induce surgical referrals; or

60 d. That is based on economic consideration affecting the surgeon

61 (f) An ophthalmologist or optometrist may not require, as a condition of making
62 referrals to a surgeon, that the surgeon must enter into a comanagement agreement with the
63 ophthalmologist or optometrist for the postoperative care of the patient who is referred.

64 (g) An ophthalmologist or optometrist to whom postoperative care is delegated under a
65 comanagement agreement governed by this section may not further delegate the care to another
66 person, regardless of whether the other person is under the supervision of the ophthalmologist or
67 optometrist.

68 (h) It is an affirmative defense to a prosecution under this section or in disciplinary
69 proceeding for violation of this section that the surgeon delegated postoperative care of a patient

70 because of unanticipated circumstances that were not reasonably foreseeable by the surgeon
71 before the surgery was performed.

72 Section 2. The board shall promulgate rules and regulations to implement section 1.