

SENATE No. 1065

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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.

PETITION OF:

NAME:

Richard T. Moore

DISTRICT/ADDRESS:

Worcester and Norfolk

SENATE No. 1065

By Mr. Richard T. Moore, a petition (accompanied by bill, Senate, No. 1065) of Richard T. Moore for legislation relative to medical spas. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1140 OF 2011-2012.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Thirteen
—————

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 2010 Official Edition
2 is hereby amended by adding the following sections: --

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

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

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

10 “Commissioner,” the commissioner of public health.

11 “Department,” the department of public health.

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

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

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

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

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

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

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

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

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

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

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

47 Section 222. The department shall issue for a term of two years, and shall renew for like
48 terms, a license, subject to revocation by it for cause, to any medical spa that meets the

49 requirements of the department established in accordance with its rules and regulations;
50 provided, however, that the department shall inspect each medical spa at least once a year. The
51 department shall designate a medical spa as a Level II facility, a Level III facility or a Level II
52 and III facility, depending on the procedures that are offered.

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

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

77 Section 225. A medical spa licensed to provide level II procedures shall have a clinical
78 director and a site director, which may be the same person. The clinical director shall have
79 sufficient and appropriate training, as the department shall define by regulation, to perform and
80 supervise any Level II procedures performed in the medical spa. The clinical director shall be
81 physically present in the medical spa for a period of time equal to at least ten percent of the hours
82 of operation of the medical spa each month and shall be available to all staff for consultation and
83 referral as needed. The clinical director or another experienced nurse or physician with
84 appropriate training shall perform all patient assessments for level II procedures and shall make
85 appropriate referrals to a collaborating physician as necessary. The site director shall have
86 clinical training and experience that is sufficient to perform and supervise the performance of
87 any Level II procedures performed in a medical spa for which he or she serves as site director.

88 The site director shall be responsible for a site-based credentialing process for all licensed
89 professionals in the medical spa that includes requirements related to professional licensure,
90 training, continuing education, and experience, and for ensuring that all licensed professionals in
91 the medical spa have adequate back-up coverage as needed. Each site director must be
92 physically present in the medical spa during the hours of operation of the medical spa or shall
93 designate an equally qualified substitute if he or she is unable to be present in a medical spa at
94 any particular time.

95 Section 226. A medical spa licensed to provide level III procedures shall have a medical
96 director and a site director, which may be the same person. The medical director shall have
97 sufficient and appropriate training, as the department shall define by regulation, to perform and
98 supervise any Level III procedures performed in the medical spa. The medical director shall be
99 physically present in the medical spa for a period of time equal to at least ten percent of the hours
100 of operation of the medical spa each month and shall be available to all staff for consultation and
101 referral as needed. The site director shall have clinical training and experience that is sufficient
102 to perform and supervise the performance of any Level III procedures performed in a medical
103 spa for which he or she serves as site director. The site director shall be responsible for a site-
104 based credentialing process for all licensed professionals in the medical spa that includes
105 requirements related to professional licensure, training, continuing education, and experience,
106 and for ensuring that all licensed professionals in the medical spa have adequate back-up
107 coverage as needed. Each site director must be physically present in the medical spa during the
108 hours of operation of the medical spa or shall designate an equally qualified substitute if he or
109 she is unable to be present in a medical spa at any particular time.

110 Section 227. The commissioner shall promulgate rules and regulations to implement the
111 provisions of sections 221-226. Notwithstanding any general or special law to the contrary, the
112 commissioner shall not be required to receive the approval of the public health council prior to
113 promulgation of such regulations. The regulations shall incorporate to the extent possible the
114 recommendations of the medical spa task force created pursuant to St. 2006, c. 81 and shall
115 include but not be limited to, a list of medical aesthetic procedures, classified as Level II and
116 Level III procedures, that may be performed in medical spas; the appropriate levels of training
117 for practitioners in medical spas; the requirements and duties of a medical spa medical director;
118 the requirements and duties of a medical spa site director; the appropriate levels of supervision
119 required in medical spas; evidence of responsibility and suitability to operate a medical spa;
120 retention of records; emergency procedures; staffing requirements; sale of goods within a
121 medical spa, and physical plant requirements. Nothing in this section shall be construed to grant
122 authority to the commissioner to limit or diminish the authority or jurisdiction of a licensing
123 board under the provisions of chapter 112 to define the scope of practice for its licensees or
124 investigate or discipline a licensee practicing under the provisions of this section.

125 Section 228. There shall be a medical spa advisory committee, composed of one
126 representative each from the boards of registration in medicine, nursing, electrology and

127 cosmetology appointed by each board's executive director, one representative from the
128 department appointed by the commissioner, one physician appointed by the board of registration
129 in medicine, one nurse appointed by the board of registration in nursing, one electrologist
130 appointed by the board of registration of electrologists, one licensed cosmetologist appointed by
131 the board of registration in cosmetology, one advanced aesthetician appointed by the board of
132 registration in cosmetology, one representative from a medical equipment manufacturer
133 appointed by the department, and one owner of a medical spa licensed by the department, and
134 appointed by the department. The commissioner shall appoint one member as chairman. The
135 members shall serve staggered three-year terms. At the end of each member's term, he or she
136 may continue to serve until his or her successor is appointed and qualified. The committee shall
137 meet as frequently as the chairman deems necessary, but not less than once each year. The
138 committee shall advise the commissioner on the appropriate classification of new medical
139 aesthetic procedures and technologies, and on other matters pertaining to the appropriate
140 regulation of medical spas. The committee shall also have the right to review and comment upon
141 all rules, regulations and guidelines issued by the commissioner at least 60 days before the date
142 such rules, regulations or guidelines become final, but in the case of emergency regulations the
143 time period shall be a reasonable time under the circumstances. The committee may also make
144 recommendations as to matters concerning medical aesthetic procedures to the board of
145 registration in medicine, the board of registration in nursing, the board of registration of
146 electrologists or the board of registration in cosmetology and may periodically advise the joint
147 committee on public health care on actions, including legislation, that may improve the quality of
148 medical aesthetics or medical spas.

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

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

166 reconsideration of the order or any portion thereof. Any fines collected pursuant to this
167 provision shall be deposited into the account established by the department for the regulation of
168 medical spas.

169 SECTION 2. Section 87EEE of chapter 112 of the General Laws, as appearing in the
170 2010 Official Edition, is hereby amended by inserting the following definitions:-

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

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

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

181 SECTION 3. Chapter 112 of the General Laws, as appearing in the 2010 Official
182 Edition, is hereby amended by inserting after section 87GGG the following section:

183 Section 87GGG ½. A licensed electrologist who was licensed prior to the inclusion of
184 laser or intense pulse light devices in the educational curriculum shall not be allowed to use said
185 devices prior to meeting educational and examination requirements as established by the Board.
186 The use of said devices by a licensed electrologist who has not met the Board requirements shall
187 be deemed practice outside the scope of the license issued to that individual, unprofessional
188 conduct pursuant to section 87III of chapter 112 of the General Laws; such uses may thus subject
189 the licensee to disciplinary action as determined by the Board.

190 SECTION 4. Chapter 112 of the General Laws, as appearing in the 2010 Official Edition,
191 is hereby further amended by inserting after section 87DD the following section: --

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

198 SECTION 5. Said chapter 112 of the General Laws is hereby further amended by adding
199 at the end thereof the following section:--

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

205 SECTION 6. Notwithstanding the provisions of section 87GGG 1/2 of chapter 112 of the
206 General Laws, for a period of one year after the effective date of said section, a licensed
207 individual shall not be required to obtain additional education to qualify to take an examination
208 to allow the use of laser and intense pulse light devices if he or she can demonstrate to the board
209 that he or she has had training and actual experience in the use of laser and intense pulse light
210 devices. Such training and experience shall only be credited if the board determines, in its
211 discretion, that the licensee has adequate knowledge to safely and effectively utilize laser and
212 intense pulse light devices.