

HOUSE No. 2079

By Mr. Dempsey of Haverhill, petition of Brian S. Dempsey relative to the disclosure of postoperative ocular care. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE 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
2 the 2004 Official Edition, is hereby amended by adding the
3 following new section:—

4 **Chapter 12 DD:**
5 **Postoperative Care After Eye Surgery.**

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

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

15 (c) A surgeon who performs eye surgery may delegate the respon-
16 sibility for the first 48 hours of postoperative care for the patient to
17 another person if the delegation occurs through a management
18 agreement that meets the requirements of this section and the person
19 to whom the responsibility is delegated is

- 20 i. An optometrist; or
- 21 ii. An ophthalmologist

22 (d) In order to satisfy the requirements of this section, a coman-
23 agement agreement for post operative care of a patient must meet the
24 following requirements:

25 i. The agreement may only be entered into when

26 1. the distance the patient would have to travel to the regular
27 office of the operating surgeon would result in an unreasonable hard-
28 ship for the patient, as determined by the patient;

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

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

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

36 iii. The agreement may be entered into only if the surgeon con-
37 firms that the person to whom the care is delegated is qualified to
38 treat the patient during the postoperative period and is licensed or
39 certified to provide the care, if required by law;

40 iv. The agreement may not take effect unless there is written state-
41 ment in the surgeon's file and in the files of the person to whom
42 postoperative care is being delegated that is signed by the patient in
43 which the patient states the patient's consent to the comanagement
44 agreement and in which the patient acknowledges that the details of
45 the comanagement agreement have been explained to the extent
46 required under (5) of this subsection;

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

50 a. The reason for delegation;

51 b. The qualifications, including licensure or certification, of the
52 person to whom the care is delegated

53 c. The financial details about how the surgical fee will be divided
54 between the surgeon and the person who provides the postoperative
55 care

56 d. A notice that, notwithstanding the delegation of care, the
57 patient may receive postoperative care for the surgeon at the
58 patient's request without the payment of additional fees;

59 e. A statement that the surgeon will be ultimately responsible for
60 the patient's care until the patient is postoperatively stable;

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

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

65 (e) A surgeon may not enter into a comanagement agreement gov-
66 erned by this section:

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

70 b. That is not clinically appropriate for the patient

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

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

73 (f) An ophthalmologist or optometrist may not require, as a condi-
74 tion of making referrals to a surgeon, that the surgeon must enter
75 into a comanagement agreement with the ophthalmologist or
76 optometrist for the postoperative care of the patient who is referred.

77 (g) An ophthalmologist or optometrist to whom postoperative
78 care is delegated under a comanagement agreement governed by this
79 section may not further delegate the care to another person, regard-
80 less of whether the other person is under the supervision of the oph-
81 thalmologist or optometrist.

82 (h) It is an affirmative defense to a prosecution under this section
83 or in disciplinary proceeding for violation of this section that the sur-
84 geon delegated postoperative care of a patient because of unantici-
85 pated circumstances that were not reasonably foreseeable by the
86 surgeon before the surgery was performed.

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