HOUSE DOCKET, NO. FILED ON: 1/12/2009

**HOUSE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Ronald Mariano**

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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 passage of the accompanying bill:

An Act relative to comanagement of ocular surgical patients.

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PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Ronald Mariano | 3rd Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2194 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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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:*

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

            “5M.               Standards for Physicians Performing Ocular Surgery

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

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

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

                     office of the operating surgeon would result in an unreasonable hardship for

                        the patient, as determined by the patient;

                                (2)  the surgeon will not be available for postoperative care of

                        the patient as a result of the surgeon's personal travel, illness, or scheduling difficulties, or

                                (3) other justifiable circumstances exist, as provided under

                        regulations of the board;

                                (4)  the agreement provides a fee to the person to whom the

                         care is delegated that does not exceed fair market value of the services provided by the person;

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

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

                                 (A)  the reason for the delegation;

                                 (B)  the qualifications, including licensure or certification, of

                       the person to whom the care is delegated;

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

                        divided between the surgeon and the person who provides the postoperative

                       care;

                                 (D)  a notice that, notwithstanding the delegation of care, the

                        patient may receive postoperative care from the surgeon at the patient's request

                        without the payment of additional fees;

                                  (E)  a statement that the surgeon will be ultimately responsible

                        for the patient's care until the patient is postoperatively stable;

                                 (F)  a statement that there is no fixed date on which the patient

                       will be required to return to the referring health care provider; and

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

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

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

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

                            (2)  is not clinically appropriate for the patient;

                            (3)  is made with the intent to induce surgical referrals; or

                            (4)  is based on economic considerations affecting the surgeon.

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

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

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