

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

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**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 passage of the accompanying bill:

An Act to the disclosure of postoperative ocular care.

PETITION OF:

NAME:

Brian S. Dempsey

DISTRICT/ADDRESS:

3rd Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2079 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### 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.

2 Chapter 112 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the  
3 following new section:-  
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5 Chapter 12 DD: Postoperative Care After Eye Surgery

- 6       (a) If a surgeon delegates the responsibility for postoperative care for a patient for whom the surgeon  
7 performed eye surgery, the surgeon may do so only by entering into a comanagement agreement with an  
8 ophthalmologist or optometrist under the provisions of this section.
- 9       (b) Except as provided in section (c), a surgeon who performs eye surgery shall be physically available to the  
10 patient for postoperative care in the community in which the operation was performed for at least 48 hours  
11 after the surgery is completed.
- 12       (c) A surgeon who performs eye surgery may delegate the responsibility for the first 48 hours of postoperative  
13 care for the patient to another person if the delegation occurs through a management agreement that meets  
14 the requirements of this section and the person to whom the 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 post operative care of a  
18 patient must meet the following requirements:  
19           i. The agreement may only be entered into when  
20               1. the distance the patient would have to travel to the regular office of the  
21 operating surgeon would result in an unreasonable hardship for the patient, as  
22 determined by the patient;  
23               2. the surgeon will not be available for postoperative care of the patient as a result  
24 of the surgeon's personal travel, illness;  
25               3. other justifiable circumstance exist, as determined by the Board of Registration  
26 in Medicine

- 27                   ii. The agreement may not provide a fee to the person to whom the care is delegated  
28                   that does not reflect fair market value of the services provided by the person;  
29                   iii. The agreement may be entered into only if the surgeon confirms that the person to  
30                   whom the care is delegated is qualified to treat the patient during the postoperative period  
31                   and is licensed or certified to provide the care, if required by law;  
32                   iv. The agreement may not take effect unless there is written statement in the surgeon's  
33                   file and in the files of the person to whom postoperative care is being delegated that is  
34                   signed by the patient in which the patient states the patient's consent to the  
35                   comanagement agreement and in which the patient acknowledges that the details of the  
36                   comanagement agreement have been explained to the extent required under (5) of this  
37                   subsection;  
38                   v. The details of the agreement shall be disclosed to the patient in writing before  
39                   surgery is performed; the disclosure required under this paragraph must include:  
40                   a. The reason for delegation;  
41                   b. The qualifications, including licensure or certification, of the person to  
42                   whom the care is delegated  
43                   c. The financial details about how the surgical fee will be divided  
44                   between the surgeon and the person who provides the postoperative  
45                   care  
46                   d. A notice that, notwithstanding the delegation of care, the patient may  
47                   receive postoperative care for the surgeon at the patient's request  
48                   without the payment of additional fees;  
49                   e. A statement that the surgeon will be ultimately responsible for the  
50                   patient's care until the patient is postoperatively stable;  
51                   f. A statement that there is no fixed date on which the patient will be  
52                   required to return to the referring health care provider; and  
53                   g. A description of special risks to the patient that may result from the  
54                   comanagement 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 the surgeon as  
57                   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 referrals to a surgeon, that  
62                   the surgeon must enter into a comanagement agreement with the ophthalmologist or optometrist for the  
63                   postoperative care of the patient who is referred.  
64 (g) An ophthalmologist or optometrist to whom postoperative care is delegated under a comanagement  
65                   agreement governed by this section may not further delegate the care to another person, regardless of  
66                   whether the other person is under the supervision of the ophthalmologist or optometrist.  
67 (h) It is an affirmative defense to a prosecution under this section or in disciplinary proceeding for violation of  
68                   this section that the surgeon delegated postoperative care of a patient because of unanticipated  
69                   circumstances that were not reasonably foreseeable by the surgeon before the surgery was performed.

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