

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Menard, Joan (SEN)**

*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 medical spas.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Menard, Joan (SEN)

First Bristol and Plymouth

Richard T. Moore

Worcester and Norfolk

# The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

## 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 2006 Official Edition is  
2 hereby amended by adding the following sections: --

3 **MEDICAL SPAS**

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

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

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

11 “Commissioner,” the Commissioner of Public Health.

12 “Department,” the Department of Public Health.

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

16 “Laser and light-based hair removal,” procedures to remove hair from the human body using  
17 laser devices or other light-based devices, and which may be performed by a physician,

18 physician’s assistant, nurse, electrologist or advanced aesthetician licensed to practice in  
19 Massachusetts.

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

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

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

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

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

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

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

42 “Practitioner,” a physician, physician’s assistant, nurse, electrologist or advanced aesthetician  
43 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 terms, a  
48 license, subject to revocation by it for cause, to any medical spa that meets the requirements of  
49 the department established in accordance with its rules and regulations; provided, however, that  
50 the department shall inspect each medical spa at least once a year. The department shall

51 designate a medical spa as a Level II facility, a Level III facility or a Level II and III facility,  
52 depending on the procedures that are offered.

53 Section 223. (1) No entity, however organized, whether conducted for profit or not for profit,  
54 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 extent  
68 authorized by his or her license issued under the provisions of chapter 112. (2) No practitioner  
69 may perform a medical aesthetic procedure in a location that is not a licensed medical spa, an  
70 exempt private office practice, or a hospital or clinic licensed pursuant to section 51 of chapter  
71 111. (3) Any practitioner who provides medical aesthetic services, whether in a licensed medical  
72 spa, an exempt private office practice, or a hospital or clinic licensed pursuant to section 51 of  
73 chapter 111 shall have sufficient and appropriate training, continuing education, and supervision  
74 as required by his or her licensing board. This section shall not apply to students enrolled in  
75 professional schools for professions permitted to perform medical aesthetic procedures as part of  
76 their training.

77 Section 225. A medical spa licensed to provide level II procedures shall have a clinical director  
78 and a site director, which may be the same person. The clinical director shall have sufficient and  
79 appropriate training, as the department shall define by regulation, to perform and supervise any  
80 Level II procedures performed in the medical spa. The clinical director shall be physically  
81 present in the medical spa for a period of time equal to at least ten percent of the hours of  
82 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 director  
96 and a site director, which may be the same person. The medical director shall have sufficient  
97 and appropriate training, as the department shall define by regulation, to perform and supervise  
98 any Level III procedures performed in the medical spa. The medical director shall be physically  
99 present in the medical spa for a period of time equal to at least ten percent of the hours of  
100 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 representative  
126 each from the boards of registration in medicine, nursing, electrology and cosmetology appointed  
127 by each board's executive director, one representative from the department appointed by the  
128 commissioner, one physician appointed by the board of registration in medicine, one nurse

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

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

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

168 SECTION 2. Section 87EEE of chapter 112 of the General Laws as appearing in the 2006  
169 Official Edition is hereby amended as follows:

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

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

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

180 SECTION 3. Chapter 112 of the General Laws as appearing in the 2006 Official Edition is  
181 hereby amended by inserting after section 87GGG the following section:

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

189 SECTION 4. Chapter 112 of the general laws as so appearing is hereby further amended by  
190 inserting after section 87DD the following section: --

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

197 SECTION 5. Said chapter 112 of the general laws as so appearing is hereby further amended by  
198 adding at the end thereof the following section:-

199 Section 237. Nothing in this chapter shall limit the ability of employees or authorized  
200 representatives of a manufacturer of a device used for medical aesthetic procedures from  
201 engaging in one or more of the following: demonstrating, evaluating, adjusting, measuring,

202 designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering  
203 a device used to provide medical aesthetic procedures.

204

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.

213