

**HOUSE . . . . . No. 2039**

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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  
3 the following new section:-

4 Chapter 12 DD: Postoperative Care After Eye Surgery

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

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

11 (c) A surgeon who performs eye surgery may delegate the responsibility for the first 48 hours of  
12 postoperative care for the patient to another person if the delegation occurs through a management agreement that  
13 meets the requirements of this section and the person to whom the responsibility is delegated is

14 i. An optometrist; or

15 ii. An ophthalmologist

16 (d) In order to satisfy the requirements of this section, a comanagement agreement for post operative care  
17 of a patient must meet the following requirements:

18 i. The agreement may only be entered into when

19 1. the distance the patient would have to travel to the regular office of the operating surgeon would result  
20 in an unreasonable hardship for the patient, as determined by the patient;

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

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

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

26 iii. The agreement may be entered into only if the surgeon confirms that the  
27 person to whom the care is delegated is qualified to treat the patient during the postoperative period and is licensed  
28 or certified to provide the care, if required by law;

29 iv. The agreement may not take effect unless there is written statement in the  
30 surgeon's file and in the files of the person to whom postoperative care is being delegated that is signed by the  
31 patient in which the patient states the patient's consent to the comanagement agreement and in which the patient  
32 acknowledges that the details of the comanagement agreement have been explained to the extent required under (5)  
33 of this subsection;

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

36 a. The reason for delegation;

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

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

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

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

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

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

47 (e) A surgeon may not enter into a comanagement agreement governed by this section:

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

50 b. That is not clinically appropriate for the patient

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

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

53 (f) An ophthalmologist or optometrist may not require, as a condition of making referrals to a surgeon,  
54 that the surgeon must enter into a comanagement agreement with the ophthalmologist or optometrist for the  
55 postoperative care of the patient who is referred.

56 (g) An ophthalmologist or optometrist to whom postoperative care is delegated under a comanagement  
57 agreement governed by this section may not further delegate the care to another person, regardless of whether the  
58 other person is under the supervision of the ophthalmologist or optometrist.

59 (h) It is an affirmative defense to a prosecution under this section or in disciplinary proceeding for  
60 violation of this section that the surgeon delegated postoperative care of a patient because of unanticipated  
61 circumstances that were not reasonably foreseeable by the surgeon before the surgery was performed.

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