

**SENATE . . . . . No. 1065**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Richard T. Moore***

*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:

*Richard T. Moore*

DISTRICT/ADDRESS:

*Worcester and Norfolk*

**SENATE . . . . . No. 1065**

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By Mr. Richard T. Moore, a petition (accompanied by bill, Senate, No. 1065) of Richard T. Moore for legislation relative to medical spas. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 1140 OF 2011-2012.]

**The Commonwealth of Massachusetts**

—————  
**In the Year Two Thousand Thirteen**  
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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 2010 Official Edition  
2 is hereby amended by adding the following sections: --

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

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

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

10 “Commissioner,” the commissioner of public health.

11 “Department,” the department of public health.

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

15 “Laser and light-based hair removal,” procedures to remove hair from the human body  
16 using laser devices or other light-based devices, and which may be performed by a physician,  
17 physician’s assistant, nurse, electrologist or advanced aesthetician licensed to practice in  
18 Massachusetts.

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

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

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

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

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

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

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

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

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

77 Section 225. A medical spa licensed to provide level II procedures shall have a clinical  
78 director and a site director, which may be the same person. The clinical director shall have  
79 sufficient and appropriate training, as the department shall define by regulation, to perform and  
80 supervise any Level II procedures performed in the medical spa. The clinical director shall be  
81 physically present in the medical spa for a period of time equal to at least ten percent of the hours

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

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

157         Section 230. Whenever the department finds upon inspection, or through information in  
158 its possession, that any licensed medical spa is not in compliance with a requirement established  
159 under sections 221-226 or the regulations promulgated thereunder, the department may order the

160 licensee to correct such deficiency. Every such correction order shall include a statement of the  
161 deficiencies found, the period prescribed within which the deficiency must be corrected, and the  
162 provisions of law relied upon. The department may assess the person ordered to correct  
163 deficiencies no less than \$1,000 and not more than \$10,000 per deficiency for each day the  
164 deficiency continues to exist beyond the date prescribed for correction. Within seven days of  
165 receipt, the affected person may file a written request with the department for administrative  
166 reconsideration of the order or any portion thereof. Any fines collected pursuant to this  
167 provision shall be deposited into the account established by the department for the regulation of  
168 medical spas.

169 SECTION 2. Section 87EEE of chapter 112 of the General Laws, as appearing in the  
170 2010 Official Edition, is hereby amended by inserting the following definitions:-

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

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

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

181 SECTION 3. Chapter 112 of the General Laws, as appearing in the 2010 Official  
182 Edition, is hereby amended by inserting after section 87GGG the following section:

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

190 SECTION 4. Chapter 112 of the General Laws, as appearing in the 2010 Official Edition,  
191 is hereby further amended by inserting after section 87DD the following section: --

192 Section 87DD1/2. A medical spa licensed pursuant to section 222, an exempt private  
193 office practice of a physician, or a hospital or clinic licensed pursuant to section 51 of chapter  
194 111 shall not be deemed to be an aesthetic shop for the purposes of section 87DD of chapter 112

195 nor shall the board of registration in cosmetology have any jurisdiction over the physical  
196 premises of a medical spa licensed pursuant to section 222, an exempt private office practice of a  
197 physician, or a hospital or clinic licensed pursuant to section 51.

198 SECTION 5. Said chapter 112 of the General Laws is hereby further amended by adding  
199 at the end thereof the following section:--

200 Section 237. Nothing in this chapter shall limit the ability of employees or authorized  
201 representatives of a manufacturer of a device used for medical aesthetic procedures from  
202 engaging in one or more of the following: demonstrating, evaluating, adjusting, measuring,  
203 designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering  
204 a device used to provide medical aesthetic procedures.

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.