

**SENATE . . . . . No. 01140**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Richard T. Moore***

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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 medical spas.

\_\_\_\_\_  
PETITION OF:

NAME:

*Richard T. Moore*

DISTRICT/ADDRESS:

*Worcester and Norfolk*

**SENATE . . . . . No. 01140**

By Mr. Moore, petition (accompanied by bill, Senate, No. 1140) of Moore for legislation relative to medical spas [Joint Committee on Public Health].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 amended by Chapter 197 of the Acts  
2 of 2010 is hereby amended by adding the following sections: --

3 MEDICAL SPAS

4 Section 223. For the purposes of sections 223 to 228, inclusive, the following words  
5 shall, unless 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 224. The department shall issue for a term of two years, and shall renew for  
48 like 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 225. (1) No entity, however organized, whether conducted for profit or not  
54 for 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 223. (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 226.

67           Section 226. (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 227. 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 228. A medical spa licensed to provide level III procedures shall have a  
96 medical director and a site director, which may be the same person. The medical director shall  
97 have sufficient and appropriate training, as the department shall define by regulation, to perform

98 and supervise any Level III procedures performed in the medical spa. The medical director shall  
99 be physically present in the medical spa for a period of time equal to at least ten percent of the  
100 hours of operation of the medical spa each month and shall be available to all staff for  
101 consultation and referral as needed. The site director shall have clinical training and experience  
102 that is sufficient to perform and supervise the performance of any Level III procedures  
103 performed in a medical spa for which he or she serves as site director. The site director shall be  
104 responsible for a site-based credentialing process for all licensed professionals in the medical spa  
105 that includes requirements related to professional licensure, training, continuing education, and  
106 experience, and for ensuring that all licensed professionals in the medical spa have adequate  
107 back-up coverage as needed. Each site director must be physically present in the medical spa  
108 during the hours of operation of the medical spa or shall designate an equally qualified substitute  
109 if he or she is unable to be present in a medical spa at any particular time.

110           Section 229. The commissioner shall promulgate rules and regulations to implement  
111 the provisions of sections 223-228. Notwithstanding any general or special law to the contrary,  
112 the commissioner shall not be required to receive the approval of the public health council prior  
113 to 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 230. 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 231. Any person who operates an unlicensed medical spa shall for a first  
150 offense be punished by a fine of not more than five hundred dollars, and for a subsequent offense  
151 by a fine of not more than one thousand dollars or by imprisonment for not more than two years.  
152 A separate and distinct offense shall be deemed to have been committed on every day during  
153 which any violation continues after written notice thereof by the department. The commissioner  
154 shall report to the attorney general any violation of section 224. Any fines collected pursuant to  
155 this provision shall be deposited into the account established by the Department for the  
156 regulation of medical spas.

157           Section 232. Whenever the department finds upon inspection, or through information  
158 in its possession, that any licensed medical spa is not in compliance with a requirement  
159 established under sections 223-228 or the regulations promulgated thereunder, the department  
160 may order the licensee to correct such deficiency. Every such correction order shall include a  
161 statement of the deficiencies found, the period prescribed within which the deficiency must be  
162 corrected, and the provisions of law relied upon. The department may assess the person ordered  
163 to correct deficiencies no less than \$1,000 and not more than \$10,000 per deficiency for each day  
164 the 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 2008 Official Edition is hereby amended as follows:

171 For the purposes of sections eighty-seven FFF to eighty-seven OOO, inclusive, the following  
172 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 an  
176 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 2008 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 laser or  
184 intense pulse light devices in the educational curriculum shall not be allowed to use said devices  
185 prior to meeting educational and examination requirements as established by the Board. The use  
186 of said devices by a licensed electrologist who has not met the Board requirements shall be  
187 deemed practice outside the scope of the license issued to that individual, unprofessional conduct

188 pursuant to G.L. c. 112, §87III; such uses may thus subject the licensee to disciplinary action as  
189 determined by the Board.

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

192 Section 87DD1/2. A medical spa licensed pursuant to section 224 of chapter 111, an exempt  
193 private office practice of a physician, or a hospital or clinic licensed pursuant to section 51 of  
194 chapter 111 shall not be deemed to be an aesthetic shop for the purposes of section 87DD of  
195 chapter 112 nor shall the board of registration in cosmetology have any jurisdiction over the  
196 physical premises of a medical spa licensed pursuant to section 224 of chapter 111, an exempt  
197 private office practice of a physician, or a hospital or clinic licensed pursuant to section 51.

198 SECTION 5. Said chapter 112 of the general laws as amended by Chapter 322 of the  
199 Acts of 2010 is hereby further amended by adding at the end thereof the following section:-

200 Section 263. 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  
206 the 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.