

**HOUSE . . . . . No. 2121**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Ronald Mariano**

*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 comanagement of ocular surgical patients.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2194 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO COMANAGEMENT OF OCULAR SURGICAL PATIENTS.

*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. Section 5 of chapter 112 of the General Laws as appearing in the 2004 official edition is  
2 hereby amended by adding at the end thereof the following new subsection:

3           “5M.           Standards for Physicians Performing Ocular Surgery

4           A surgeon who is scheduled to perform eye surgery shall personally examine the patient within two months  
5 prior to the surgery and shall be personally responsible for the decision to operate, and for the patient’s care in the  
6 first 24 hours, or up to and including the first post operative visit. The surgeon may delegate the responsibility for  
7 the second 24 hours of postoperative care for the patient to another person if the delegation occurs through a co-  
8 management agreement that meets the requirements of this section and the person to whom the responsibility is  
9 delegated is an ophthalmologist or optometrist licensed under the provisions of this chapter.

10          A co-management agreement may be entered into only when:

11          (1) the distance the patient would have to travel to the regular  
12 office of the operating surgeon would result in an unreasonable hardship for  
13 the patient, as determined by the patient;

14          (2) the surgeon will not be available for postoperative care of  
15               the patient as a result of the surgeon's personal travel, illness, or scheduling difficulties, or

16 (3) other justifiable circumstances exist, as provided under  
17 regulations of the board;

18 (4) the agreement provides a fee to the person to whom the  
19 care is delegated that does not exceed fair market value of the services provided by the person;

20 (5) the surgeon confirms in writing that the person to whom the care is delegated is qualified to treat the  
21 patient during the postoperative period and is licensed or certified to provide the care if license or  
22 certification is required by law;

23 The details of the agreement shall be disclosed to the patient in writing before surgery is performed, and shall  
24 include:

25 (A) the reason for the delegation;

26 (B) the qualifications, including licensure or certification, of  
27 the person to whom the care is delegated;

28 (C) the financial details about how the surgical fee will be  
29 divided between the surgeon and the person who provides the postoperative  
30 care;

31 (D) a notice that, notwithstanding the delegation of care, the  
32 patient may receive postoperative care from the surgeon at the patient's request  
33 without the payment of additional fees;

34 (E) a statement that the surgeon will be ultimately responsible  
35 for the patient's care until the patient is postoperatively stable;

36 (F) a statement that there is no fixed date on which the patient  
37 will be required to return to the referring health care provider; and

38 (G) a description of special risks to the patient that may result from the comanagement  
39 agreement.

40 The agreement may not take effect unless there is a written statement in the surgeon's file and in the files of the  
41 person to whom postoperative care is being delegated that is signed by the patient in which the patient consents to  
42 the comanagement agreement and in which the patient acknowledges that the details of the comanagement  
43 agreement have been explained and are understood.

44 A surgeon may not enter into a co-management agreement governed by this section if the agreement:

45 (1) exists as a matter of routine policy rather than on a case-by-case basis;

46 (2) is not clinically appropriate for the patient;

47 (3) is made with the intent to induce surgical referrals; or

48 (4) is based on economic considerations affecting the surgeon.

49 An ophthalmologist or optometrist may not require, as a condition of making referrals to a surgeon, that the surgeon  
50 must enter into a co-management agreement with the ophthalmologist or optometrist for the postoperative care of  
51 the patient who is referred.

52 An ophthalmologist or optometrist to whom postoperative care is delegated under a co-management agreement  
53 governed by this section may not further delegate the care to another person, regardless of whether the other person  
54 is under the supervision of the ophthalmologist or optometrist.

55 It is an affirmative defense to a prosecution under this section or in a disciplinary proceeding for violation of this  
56 section that the surgeon delegated postoperative care of a patient because of unanticipated circumstances that were  
57 not reasonably foreseeable by the surgeon before the surgery was performed. A physicians failure to comply with  
58 the provisions of this section shall constitute grounds for disciplinary action under section 5 of this chapter.