

Testimony of the Massachusetts Medical Society
in opposition to Senate 836
An Act Relative to Medical Spas
Before the Joint Committee on Public Health
July 21, 2009

This legislation comes out of a task force that met for two years to address issues involving public safety and fraud in the context of cosmetic procedures. The MMS has concerns that the recommendations of the task force report raise more potential problems than they address.

The MMS is concerned that this legislation limits the role of physicians in the oversight and provision of cosmetic procedures, increases the authority of non-medical boards to authorize medical procedures by their licensees and reduces patient protections. Currently the Board of Registration in Medicine has a staff of nearly 100 individuals and a budget of over 10 million dollars per year. The Board of Medicine has the resources and experience to oversee medical procedures and office based practices. Other licensing Boards and the Department of Public Health have neither the experience nor the resources to protect the public and ensure good clinical practice.

This legislation purports to recognize the role of physician practice sites by exempting sites where owners actively practice from regulation by the Department of Public Health. The definition of actively practicing is too narrow, however, in that it requires a “majority of the weekly clinical practice time of the practitioner”. That means that a dermatologist or plastic surgeon could only provide services in one site. Any site which such a physician visits once a week, for example, would have to have a license from the DPH. This does not reflect the shortage of access to dermatologists particularly in Western MA. There should be a complete exemption from licensing by the Department for facilities owned and operated by physicians. The Board of Registration in Medicine has policies on the sale of goods from physician offices to protect patients from financial exploitation and could clearly develop regulations or policies to address any concerns regarding physicians who practice in too many sites or who fail to adequately supervise their personnel.

While many physician specialists currently practice in more than one location, other practitioners do not. This legislation defines a “**Practitioner,**” as a physician, physician’s assistant, nurse, **electrologist or advanced aesthetician** licensed to practice in Massachusetts. Thus electrologists and advanced aestheticians who own one shop will be exempt from the DPH’s licensing process under the following provision of the legislation:

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

The MMS has concerns that the legislation has no focus on cosmetic procedures but allows the DPH to define anything as falling under its regulations.

Level II procedures” are defined by the Commissioner of Public Health as minimally invasive with mild to moderate risks.”

“Level III procedures” again are defined by the Commissioner as more invasive and of greater risk and which shall be the “practice of medicine or nursing”. The Department does not under statute define the practice of medicine or nursing. These roles are defined by the respective Boards.

The MMS is concerned that this legislation would allow lasers to be used by advanced aestheticians and electrologists without supervision. Advanced aestheticians do not even exist as a recognized category or professional prior to this legislation. The MMS strongly opposes this provision.

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

The MMS has significant concerns with the language in the bill that on its face prohibits the practice of medicine in office practices . The following language, when coupled with the lack of definition of medical aesthetic services noted above, would prevent a medical group named Boston Medical Associates without a DPH license.

Section 223. (1) No entity, however organized, whether conducted for profit or not for profit, may provide medical aesthetic services under a name that includes the words “medical aesthetics,” “medical spa,” the word “medical” or any derivative thereof or words to similar effect unless it is licensed pursuant to section 222.

The following section seems to re-open the physician office exemption but as noted above, it exempts all other licensees, including electrologists from DPH licensing.

Section 224. (1) No person may perform a medical aesthetic procedure except to the extent authorized by his or her license issued under the provisions of [chapter 112](#) (2) No practitioner may perform a medical aesthetic procedure in a location that is not a licensed medical spa, **an exempt private office practice**, or a hospital or clinic licensed pursuant to [section 51 of chapter 111](#). (3) Any practitioner who provides medical aesthetic services, whether in a licensed medical spa, an exempt private office practice, or a hospital or clinic licensed pursuant to [section 51 of chapter 111](#) shall have sufficient and appropriate training, continuing education, and supervision as required by his or her licensing board. This section shall not apply to students enrolled in professional schools for professions permitted to perform medical aesthetic procedures as part of their training.

The net effect of this confusing legislation would be to increase regulation on physicians significantly while opening medical practices to non-physician practitioners. There are no

protections for the public such as requiring disclosure by non-MD providers, disclosing ownership interests, banning the sale of goods (as the Board of Medicine does) or requiring the presence of an MD as a clinical director.

This legislation is the result of a political process which is attempting to address a clinical issue. The net result of the two year process is a series of recommendations which benefit the majority of those who participated in the meetings of the commission rather than the public. The MMS urges the rejection of the bill as drafted and is willing to work with the committee to address ongoing concerns involving patient safety and the protection of the public from financial exploitation by spa operators.