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BILL ANALYSIS

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House Bill 5134 (Substitute H-2 as reported without amendment)

Sponsor: Representative Edward Gaffney

House Committee: Health Policy

Senate Committee: Health Policy

Date Completed: 5-10-04

RATIONALE

Reportedly, cosmetic procedures involving the use of lasers, such as hair removal and facial resurfacing, are offered by spas, salons, and walk-in clinics with increasing frequency, often for a significantly lower price than what the procedures would cost at a dermatologist's office. Apparently, these procedures often are performed by unqualified cosmetologists and estheticians, without the supervision of a physician. Used improperly, lasers can cause severe burns, scarring, irreversible skin discoloration, extreme sensitivity to sunlight, and permanent nerve damage, as well as interfere with the proper and timely diagnosis of serious conditions such as skin cancer. In light of the potential harm to patients from improperly administered dermatological laser treatments, it has been suggested that individuals who are not physicians should be prohibited from performing such procedures unless supervised by a physician.

CONTENT

The bill would amend the Public Health Code to prohibit a licensee, registrant, or other individual from performing any procedure using a laser for dermatological purposes unless the procedure was performed under the supervision of a licensed physician; and the patient had knowledge and consented to the procedure being performed by the licensee, registrant, or individual. The prohibition would not apply to a licensed physician.

The bill also would allow the Department of Community Health to promulgate rules to prohibit further or otherwise restrict the use of lasers for dermatological purposes.

Under the bill, "supervision" would mean the overseeing of or participation in the work of another individual by a health professional licensed under the Code in circumstances under which at least all of the following conditions existed:

- The continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional.
- The availability of a licensed health professional on a regularly scheduled basis to review the practice of and provide consultation to the supervised individual, to review records, and to educate the supervised individual further in the performance of his or her functions.
- The provision by the licensed supervising health professional of predetermined procedures and drug protocol.

Proposed MCL 333.16276

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Reportedly, there has been a significant increase in the number of people seeking

cosmetic procedures involving lasers from people other than dermatologists, and seeking treatment to repair the results. In a 2002 survey by the American Society for Dermatologic Surgery, 41% of the respondents reported an increase in patients' seeking corrective treatment over the year for damage caused by untrained, non-physicians who performed cosmetic procedures, the majority of them laser and light-based hair removal procedures.

There are approximately 30 different types of lasers used for various dermatological purposes, including getting rid of acne, smoothing lines and wrinkles, and removing birthmarks, scars, tattoos, and unwanted body and facial hair. In addition to choosing the correct laser for the diagnosis or desired results, the person performing the procedure must take into account the patient's skin type, complexion, and age, as well as the specific body area affected. With regard to hair removal, for example, lasers work best on people with fair skin and dark hair. Patients with darker skin face a much greater risk of serious burns. A person insufficiently experienced with laser use can go too deep, creating an injury the skin cannot repair. Proper postoperative care also is critical to preventing infection and scarring.

Furthermore, laser use by non-physicians potentially can be life-threatening, because the person administering the treatment could mistake a serious condition, such as melanoma, for a benign freckle or birthmark. The laser treatment also could lighten precancerous and cancerous lesions, delaying identification while the melanoma grows and metastasizes.

In addition, improper laser procedures can affect people's activities with their families, prevent them from doing things they enjoy, and limit patients' clothing options, as they try to cover up scars caused by second- and third-degree burns and protect their damaged skin from the sun. A person whose laser procedure goes awry can become depressed, especially if he or she underwent the procedure to correct a serious scar or disfigurement.

Because of the expertise necessary to administer these treatments safely, some dermatologists even argue that

dermatological procedures involving lasers should not be performed by licensed physicians who specialize in areas other than dermatology. Reportedly, however, the only training many spa or salon employees undergo is a weekend session run by laser manufacturers eager to increase their products' commercial use. While non-physician employees might learn to operate a laser, they are not trained to diagnose potentially serious skin conditions or adequately address complications that can arise during the procedures.

In light of the serious pain and permanent damage that can be inflicted upon unsuspecting patients, and the health risks that are possible, it is clear that dermatological procedures involving use of a laser would be best left to physicians and those operating under their supervision.

Response: Nurse practitioners are well-trained and many work for multisite dermatologists who are not always present. Nurse practitioners are not required by State law to be supervised by a physician in any other area within their scope of practice. Perhaps the bill should make an exception for these professionals.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dana Patterson

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.