



May 14, 2015

Chairman James Hamper  
Chairwoman Margaret Rotundo  
Committee on Appropriations and Financial Affairs  
c/o Office of Fiscal and Program Review  
5 State House Station Augusta, ME 04333

**RE: Opposition of the proposed Cosmetic Procedures Tax**

Dear Chairman Harper, Chairwoman Rotundo and Honorable Members of the Committee on Appropriations and Financial Affairs:

On behalf of the undersigned organizations, we strongly urge the Committee on Appropriations and Financial Affairs to remove the tax on cosmetic medical procedures from the proposed 2016-2017 Maine biennial budget. These taxes are discriminatory, as well as economically and fiscally damaging. The track record for a cosmetic surgery tax, most notably in New Jersey, demonstrated that a tax on cosmetic medical procedures did not produce significant revenue and forced patients to cross state lines to avoid the tax, thus depriving that state’s physicians’ business. Because of the failed New Jersey experience (the tax has since been repealed), several other states who considered cosmetic surgery taxes decided against it. For the following reasons, we respectfully request that the Committee consider all likely consequences of this proposed tax before moving forward:

**It Makes Tax Collectors a Part of Medical Care**

If passed, this proposal invites the Maine Department of Administrative and Financial Services (the Department) into the exam room, threatening the confidentiality of the physician-patient relationship and patient privacy rights. State tax officials will examine patient medical records and photographs; even audit them after the fact, to determine the tax on the patient’s procedure. Tax auditors, with no medical expertise, will be making a judgment as to whether the procedure is cosmetic or reconstructive.

This process requires Maine’s tax regime to engage in activities that are wholly outside its purview and expertise. For example, what safeguards will the Department put into place when it handles sensitive patient information and what level of understanding does it have of the requirements of the federal Health Information Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act? What sort of costs will be incurred by the state to ensure compliance or, if sufficient safeguards are not enacted, to adjudicate a federal enforcement action in the case of a data breach?

The Department will also need to make recurring determinations that demand a nuanced understanding of the complexities of medical practice, such as the often very fine distinction between what care – or components of care – shall be deemed cosmetic and what shall be deemed reconstructive. Allowing state tax

auditors to determine medical necessity is completely inappropriate and, again, risks civil action from patients and physicians who were inappropriately taxed.

Ultimately, the implementation and administration of this tax is of utmost concern to us, as it requires physicians to convince tax authorities of the medical relevance of each elective procedure.

### **It Pursues a Failed Policy**

Even if one assumes that the structural requirements to legally and effectively enforce this tax are met in Maine, prior history demonstrates that this kind of tax actually does fiscal damage. New Jersey projected revenues at \$24 million annually. The tax ultimately raised an average of \$7.6 million, a 70 percent shortfall. Further, an independent economic analysis revealed that for every \$1.00 the state brought in with the tax, \$3.39 was lost. Lastly, as alluded to in the previous section, the administrative burden associated with ensuring appropriate application of this tax was onerous. The practical realities of the tax were so compellingly negative that the New Jersey legislator who originally introduced the tax in 2004, former Assemblyman Joseph Cryan, championed efforts to repeal it and has even advocated against these taxes in other states (attachment 1). The 2012 repeal of the New Jersey cosmetic tax was nearly unanimous.

In 2009, Congress considered taxing cosmetic medical procedures as a mechanism to help fund health care reform. After learning of the failed New Jersey experience, federal lawmakers took this provision off the table entirely. Several other states in recent years have followed a similar path and eschewed proposals to enact taxes on cosmetic medical procedures.

### **It Drives Patients out of State**

As evidenced in the failed New Jersey experiment, patients will understandably seek medical care in the surrounding states that do not tax these procedures. New Jersey physicians lost substantial business to Philadelphia and New York, and this was no doubt a driving factor behind both the fiscal and economic failure of the policy. Based on this “surgical flight” as a result of the cosmetic tax, it is realistic to expect a similar loss of business in Maine. Recruiting and retaining physicians in Maine is already difficult, and this tax would further threaten the availability of many specialists.

### **It Discriminates Against Middle-Class Women**

The American Society of Plastic Surgeons recently released procedural statistics that show 92% of all cosmetic surgery patients are women. Further, 86% of these women are employed, and 60% of patients who plan to receive elective cosmetic surgery have incomes between \$30,000 and \$90,000 per year. These data show that the proposed tax is not a “luxury” tax – it is a discriminatory tax on working women with average incomes.

### **The Ambiguity of the Tax Could Result in Broader Application**

The proposal in Maine’s biennial budget taxes an ill-defined subset of “cosmetic” medical procedures. We worry this could result in a cascading application of the tax that could ultimately include all elective surgical procedures. Will a young woman with congenital absence of the breast be taxed for her reconstructive breast implant? Will a post-bariatric panniculectomy be labeled cosmetic? Will Lasik eye correction surgery be taxed because it allows an individual to no longer wear eyeglasses, a cosmetic improvement?

Medical care should not be the political tool used to shore up a state’s financial health. The fundamental truth is that the cosmetic tax “tool” is objectively ineffective. With the cost of medical services continually rising, now is not the time to place an additional financial burden on Maine’s working class women.

We appreciate the opportunity to provide comment and strongly urge you to strike this provision from the 2016-2017 budget proposal. If you have any questions, please contact Patrick Hermes, ASPS Senior Manager of Government Affairs and Advocacy, at [phermes@plasticsurgery.org](mailto:phermes@plasticsurgery.org).

Sincerely,



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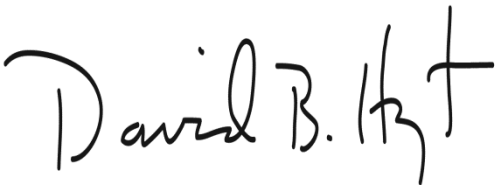
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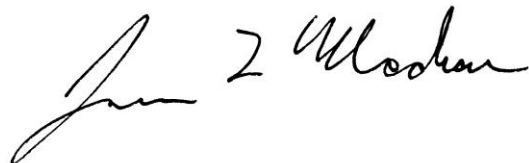
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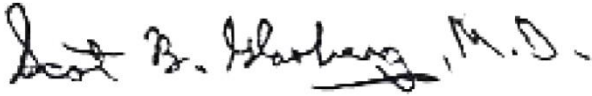
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cc: Members, Joint Committee on Appropriations and Financial Affairs

Michael D. Thibodeau, President of the Senate

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Jeff McCabe, House Democratic Leader

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