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## EXHIBIT 9

**Massachusetts Society of Pathologists**

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**Admin. Assistant:** Adele Beggs, Wellesley Hills

October 5, 1995

TO: MSP Members

FROM: Kevin B. Dole, M.D., Past President



At the request of the Executive Committee of the Massachusetts Society of Pathologists, I am forwarding you a copy of the Board of Registration in Medicine's interpretation of the Medical Practice Act in Massachusetts. The Massachusetts Society of Pathologists and the Massachusetts Medical Society requested an opinion in March of 1995 to clarify that the interpretation of anatomic specimens was indeed the practice of medicine. It had come to our attention that Massachusetts patients were being biopsied in Massachusetts and the biopsy was being sent out of state for interpretation by a pathologist who was not licensed in Massachusetts. These pathologists were rendering a primary diagnosis which was being sent back to the Massachusetts physician who was treating the patient based only on this diagnosis.

As you can see from the enclosed letter, the Board of Registration agrees with our opinion and numerous other states that this constitutes the practice of medicine and that these pathologists should be licensed in Massachusetts in order to practice. They have also asserted that the Board of Medicine has the power to discipline physicians who are sending their specimens to unlicensed physicians since they have the power to sanction any physician who aids and abets the unlicensed practice of Medicine.

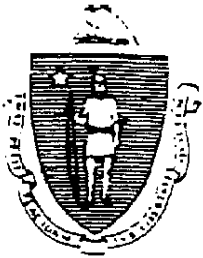
You should alert your physician colleagues of this interpretation in order for them to avoid a Board sanction or fine. You should also be aware that the malpractice insurance carried by these out-of-state pathologists would not cover them in a state where they are not licensed to practice, thereby rendering them uninsured.

As a point of clarification, this interpretation does not include routine lab work, since no diagnosis is rendered. It would, however, include cytologies since diagnoses are rendered. It does not preclude you from consulting an out-of-state pathologist. This is considered a consultation and not a primary diagnosis. The Board has defined a consultation as between two physicians with equivalent training, i.e., pathologist to pathologist and not primary care physician to pathologist.

The Board has not as of yet formulated an enforcement mechanism, but will handle any complaints as received. The Massachusetts Medical Society will be publishing a notice in its publication, *Executive Brief*.

I will keep you informed if we hear any additional information on this topic.

Alan S. Goldberg  
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Commonwealth of Massachusetts  
Board of Registration in Medicine

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September 18, 1995

Harry L. Greene II, M.D.  
Executive Vice President  
Massachusetts Medical Society  
1440 Main Street  
Waltham, Massachusetts 02154-1649

Kevin B. Dole, M.D.  
President  
Massachusetts Society of Pathology  
P.O. Box 81-188  
Wellesley Hills, Massachusetts 02181

Dear Drs. Greene and Dole:

I apologize for the delay in responding to your March 20, 1995 letter requesting the Board's opinion on whether the described practice arrangement constitutes the unlicensed practice of medicine. It is the opinion of the Board that it does.

The facts as you reported them are as follows: biopsies are being performed on patients by Massachusetts licensed physicians. The biopsies are sent out of state and diagnosed by out-of-state physicians. There is a presumption that the physicians performing the diagnoses are not licensed in Massachusetts. Upon diagnosis, reports are returned to Massachusetts and treatment is rendered based upon the reports. These are not consultant reports but primary diagnostic reports.

The relevant part of the Board's regulations defines the "practice of medicine":

the following conduct, the purpose or reasonably foreseeable effect of which is to encourage the reliance of another person upon an individual's knowledge or skill in the maintenance of human health by the prevention, alleviation, or cure of disease and involving or reasonably thought to involve an assumption of responsibility for the other person's physical or mental well being: diagnosis, treatment, use of instruments or other devices, or the prescription or

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administration of drugs for the relief of diseases or adverse physical or mental conditions. . . .

243 CMR 2.01.

The Board agrees that this practice by out-of-state physicians (1) involves the rendering of a diagnosis based upon the biopsy, (2) the purpose or reasonably foreseeable effect of which is to encourage reliance on a non-Massachusetts-licensed physician's knowledge or skill in evaluating the biopsy, and (3) presumably involves an assumption of responsibility for the Massachusetts patient's physical well-being by the non-Massachusetts-licensed physician rendering the primary diagnosis, and as such constitutes the unlicensed practice of medicine.

In addition, please note that Board regulation 243 CMR 1.03(5)(6) states that a licensee may be disciplined for "[k]nowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license." You may wish to advise your members of the Board's position on this issue, and of the potential implications for Massachusetts licensees.

I hope that this opinion is helpful. If you have further questions, please do not hesitate to contact me.

Very truly yours,

Penelope Wells  
General Counsel

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