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**Statement of Anne Taylor, MD  
On Behalf of the Ohio State Medical Association  
To the House Ways and Means Committee  
House Bill 49 – Main Operating Budget  
Thursday, March 2, 2017**

Chairman Schaffer, Ranking Member Rogers and Honorable Members of the House Ways and Means Committee, my name is Anne Taylor, M.D. and I am a board certified plastic surgeon practicing in Worthington, OH. I am here today on behalf of the Ohio State Medical Association and I am speaking in opposition to the proposed tax on cosmetic medical procedures from the proposed FY18-19 budget and urge you to remove this provision from the bill.

The track record for cosmetic surgery taxes, most notably in New Jersey, shows that they do meet revenue projections, drive patients across state lines to avoid the tax, and are very difficult to collect. Additionally, procedural statistics show that cosmetic taxes disproportionately impact middle class women. Taken together, this is a track record of these taxes being discriminatory, economically harmful and fiscally damaging.

These flaws led to repeal of the New Jersey tax, and they have stopped other state legislatures from advancing proposed cosmetic taxes. For the following reasons, we urge this Committee to do the same:

**This Tax Increase Brings the Department of Taxation into the Exam Room**

If passed, this proposal will require state tax officials to understand the nuances of surgical cases where the tax may apply. This could result in their auditing patient medical records and photographs to determine if a procedure is cosmetic or reconstructive. In addition to being a compliance nightmare for the Department of Taxation – violations of federal patient privacy laws, even if inadvertent, are severely punished – it makes tax collectors responsible for evaluations well beyond their capability. The line between what is cosmetic and what is reconstructive is not always bright, and basing a tax on that distinction will demand widespread, complex and risky auditing of individual medical practices.

**This Tax Increase is a Fiscal and Economic Loser**

Leaving aside the question of how a cosmetic tax will actually be implemented and enforced, the New Jersey experience reveals another problem – these taxes actually do fiscal and economic *damage*.

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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 of the tax from 2005-2008 revealed that for every \$1.00 the state brought in with the tax, \$2.94 was lost. This was driven in part by what is known as “surgical flight,” a phenomenon where patients seek medical care in the surrounding states that do not tax these procedures. Because the entire economic value of the cosmetic medical encounter is lost, the impact on the state goes beyond the lost sales tax revenue and also directly hits corporate and personal income tax revenue.

#### **This Tax Increase is a Tax on Middle Class Women**

According to procedural statistics collected by the American Society of Plastic Surgeons, 92% of all cosmetic surgery patients are women; 86% of these women are working; and 60% of all patients who plan to receive elective cosmetic surgery make between \$30,000 and \$90,000 per year. This demographic will bear the brunt of the proposed tax, which – in light of the data above – is really a middle class tax increase.

#### **This Tax Increase Could Be Applied Well Beyond Its Intent**

As previously noted, it is often hard to determine what is elective and what is medically necessary. This is true in a clinical sense, where the same procedure – breast reduction, for example – can be performed for cosmetic or medically-necessary reasons. It is also true in an administrative sense, because payers have different coverage criteria for medical necessity. The result is that the same procedure, performed on different patients who have the same indications, can be treated as cosmetic in some cases or medically-necessary in others depending on the insurance companies involved.

As complex as such varying classifications of whole procedures can be, it can be even more difficult to determine whether individual aspects of reconstructive processes are functional or cosmetic. When put into practice, this complexity could lead to the cosmetic tax being inappropriately applied, which could in turn result in additional administrative challenges and/or legal action by unfairly taxed Ohioans.

#### **Conclusion**

Ultimately, New Jersey’s tax failed because it shared the same weaknesses as the tax currently under consideration here. The New Jersey experiment was such an abject failure, in fact, that its original sponsor, former Assemblyman Joseph Cryan, led the successful 2012 effort to repeal the tax.

I again urge the Committee to abandon this proposal and, in doing so, avoid future fiscal shortfalls, potential legal exposure, economic damage and creating a new tax that disproportionately impacts middle class women. I appreciate your commitment to the fiscal health of Ohio and am happy to answer any questions you might have.