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TO: House Health and Human Services Committee
FROM: Todd Fleischer, CAE
Executive Director
RE: House Bill 2146, Allowing for Corporate Practice of Medicine

My name is Todd Fleischer. I am the Executive Director of the Kansas Optometric Association, which represents optometrists across Kansas. Thank you for the opportunity to submit testimony in opposition to House Bill 2146, which deals with the corporate practice of medicine.

Doctors of optometry are independent primary health care providers who examine, diagnose, treat and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. They examine the internal and external structure of the eyes to diagnose eye diseases like glaucoma, cataracts and retinal disorders; systemic diseases like hypertension and diabetes; and vision conditions like nearsightedness, farsightedness, astigmatism and presbyopia. Optometrists also do testing to determine the patient's ability to focus and coordinate the eyes, and to judge depth and see colors accurately. They prescribe eyeglasses and contact lenses, low vision aids, vision therapy and medicines to treat eye diseases as well as perform minor emergency procedures.

As primary eye care providers in all corners of the state, optometrists are an integral part of the health care team and an entry point into the health care system. They are skilled in the co-management of surgical eye care, such as cataract, glaucoma or retinal procedures, which affects the eye health and vision of their patients and an excellent source of referrals to other health care professionals. Optometrists practice independently or in partnership or employment with licensed physicians or osteopaths, without influence or interference by non-licensed entities around patient care, scheduling or referrals.

Some optometrists choose to practice adjacent to an optical or other business not owned by an optometrist. They do this by a simple lease arrangement and entry for the doctor's office is separate from the retail establishment. Under Kansas law, the optometrist controls the practice, what type of care is provided, what insurance panels the doctor participates in or when and where they make referrals to specialists for care. This is a model that has worked in Kansas and other states for many years and has served patients well.

Proponents of the HB 2146 approached the Kansas Optometric Association regarding this legislation last summer. We appreciate their willingness to bring this issue to us to allow us to review the language and share our thoughts and concerns. We had multiple discussions and consistently shared our concerns regarding independence of health care decision making and the lack of real oversight of corporations



given the authority to directly hire physicians under this legislation. Despite their expressed interest in discussing our concerns, HB 2146 seems identical to the bill that was introduced just before the deadline last session.

On the surface, this issue may seem fairly simple, but it is not. The proponents point out that other states allow for the corporate practice of medicine. Missouri is one of these states. Some of our members practice on both sides of the state line in settings adjacent to a retail establishment. They report to us a significant difference in how their practices operate and how the retail management directs their hours of operation, influences how exams are scheduled, forces doctors to take health care plans and pushes promotions that may not be in the best interest of the patient. In Kansas, optometrists are independent of such control. Here, business entities can't legally interfere with patient care or how it is delivered, can't control what products the doctor prescribes or dispenses, can't set quotas of how many patients a doctor sees in an hour, can't control to whom or for what referrals are made, can't hire or fire office employees and they do not have access to patient records, the books of the practice or share in the profits. Further, in this state, optometrists are also solely responsible for how they market their practices, and they are regulated in these activities by the Kansas State Board of Examiners in Optometry, which can levy penalties, ranging from fines to license suspension or revocation, for violations of the Optometry Law or rules and regulations promulgated by the Board.

During discussions with the proponents, we also shared concerns about professional liability. While there is some language in the bill indicating the corporations would bear some liability, it's vague. The proponents indicated that the health care providers would still have primary professional liability, because they are licensed by the Board of Healing Arts. This is a significant concern, as the certificate of authority mentioned in the bill doesn't seem to have the same regulatory oversight as the doctor's license to practice. Further, because the bill does not require corporations to be licensed by the Kansas Department of Health and Environment like hospitals, the threat of severe fines or loss of licensure is not addressed.

Under the proposed bill, optometrists are not directly affected, because the Optometry Law specifically prohibits the corporate practice of optometry. However, we are concerned about those optometrists who practice in partnership or the employment of a physician or osteopath. If a corporation were to purchase a physician-owned practice that employs an optometrist, it is our interpretation of this bill that the optometrist would no longer be able to practice in that setting without violating the Optometry Law.

Finally, our most significant concern with this legislation is the potential for interference in the doctor-patient relationship. We believe strongly that doctors should be their patients' strongest advocate, with decisions about appropriate care and treatment based on what's best for the patient, made in conjunction with the doctor and patient, not a corporate bottom line.

It is our belief the proponents can offer the services they want to for their employees and insureds using the existing legal framework. But if a change is truly needed, we encourage continued discussion for solutions to the complex issues we have raised that would allow for flexibility in health care delivery while maintaining the fundamentals of the doctor-patient relationship.

We encourage your careful review of House Bill 2146 and respectfully ask that you do not pass this bill out of committee. There needs to be significant conversations around this issue by all interested parties to make sure that there are not unintended consequences that could have long-term effects on the health care delivery system in Kansas.

