KANSAS MEDICAL SOCIETY
Established 1859

To: House Health and Human Services

From : Rachelle Colombo, Director of Government Affairs

Date: February 12, 2019

Re: HB 2146; Allowing the Corporate Practice of Medicine

The Kansas Medical Society appreciates the opportunity to provide comments on HB 2146, which would remove existing statutory barriers to enable a "business entity" such as a general corporation, LLC, partnership or other corporate entity to engage in the practice of medicine by employing physicians. While we cannot support this legislation as it is currently written, we do agree that this subject needs some careful study and attention, perhaps through an interim committee.

Most states, Kansas included, prohibit general corporations from practicing professions such as medicine, law, engineering and many others. Specifically as it relates to physicians, the prohibition on the "corporate practice of medicine" (CPOM) evolved over public policy concerns that allowing corporations to practice medicine by employing physicians could create a conflict because a corporation's obligation to its shareholders may not align with the physician's fundamental duty to put the patient's welfare above all else. The CPOM prohibition doctrine, we believe, protects the interests of patients by insuring that a corporation may not interfere with the physician's independent medical judgment.

In Kansas, as in most states, some specific and relatively narrow exceptions to the CPOM prohibition have evolved, mostly related to the ability of hospitals to employ physicians. In *St. Francis Regional Medical Center, Inc. v. Weiss* (1994), the Kansas Supreme Court upheld the employment contract between that hospital (now Via Christi) and an employed physician. The Court found that although the hospital was a general corporation, it could enter into and enforce the employment contract with the physician. The Court's reasoning was basically that hospitals are licensed by KDHE for the purpose of providing health care services and, for this reason, the public policy considerations which resulted in the statutory and judicial restrictions on the corporate practice of medicine were not applicable as it relates to hospitals.

The Kansas Healing Arts Act, which HB 2146 amends, contains several provisions which taken together, provide the statutory framework for the corporate practice prohibition. Only persons who hold a license issued by the Board can practice medicine in Kansas. There are very specific standards relating to education,

professional character and conduct which individuals must meet in order to obtain a license. While physicians can delegate acts which constitute the practice of medicine to qualified individuals, the person to whom the acts are delegated are prohibited from representing to other that they are authorized to practice medicine. Licensees are also prohibited from permitting an unlicensed person, including a corporation, from using their license to practice medicine.

Every state also provides an exception for professional corporations of licensed health care providers, which are corporations organized for the specific purpose of rendering a professional service. Kansas law (KSA 17-2706, *et seq.*) covers about two dozen professions including physicians, and specifies how professional corporations should be structured, and who can participate as shareholders or owners, which typically must be individual persons licensed to render the same professional service as the professional corporation. HB 2146 singles out the practice of medicine by physicians as the only profession that will not have corporate practice limitations, which raises questions about whether there is a compelling public need to make such a distinction in the law, or whether the patients/clients of all professionals listed in Chapter 17, Article 27 should have the same protections and be treated equally under the law.

As we noted above, we are certainly open to discussing whether the corporate practice prohibition in Kansas law should be retained, stricken or modified. We do support the concept in New Section 1 of the bill that requires corporate entities to *"leave the method, manner and means of patient treatment to the discretion of the licensed individuals treating such patients, and not impose or substitute its judgment for that of the licensed individuals."* We would favor stronger language to the effect that any corporate employer could not interfere in any way with the exercise of a physician's independent clinical judgment in the care and treatment of patients.

KMS has convened a task force comprised of both employed and privately practicing physicians to discuss if and how corporate practice should be statutorily regulated. The task force has developed principles attached to this testimony that we believe should be reflected in any public policy change adopted by the legislature. They demonstrate the complexity of this issue and are designed to avoid any unintended consequences not contemplated by HB 2146. Each and every principle is built upon our belief that the employment of physicians ought to be regulated consistently between corporations and health care entities to ensure that physician judgment is not interfered with and patients are protected.

KMS recognizes that the health care environment is undergoing significant change, with new delivery models, widespread consolidation of facilities and practices, and immense pressure on every part of the system to slow or reduce the growth in

health care costs, while improving quality and patient outcomes. We are not convinced that relaxing the prohibitions on corporate practice will help address the challenges the health care system faces in the coming years. However, we believe that regardless of how the system evolves, the primary responsibility of physicians and other health care providers should be to put the patient first, and the best way to do that is to preserve the physician's exercise of independent medical judgment, regardless of the manner in which the physician is employed.

We believe this issue has far-reaching implications for patient care, and that it could benefit from a process that provided an opportunity for more open and comprehensive conversation with those in the health care field including hospitals, regulatory boards, the health care stabilization fund, physicians and corporations interested in practicing medicine. If the legislature saw we fit, we believe an interim study would be an excellent avenue for more thoroughly considering this significant policy change.

Until all affected stakeholders have had the opportunity for such a conversation, at which all of the issues can be identified and discussed, the Kansas Medical Society respectfully requests your opposition to the passage of HB 2146.

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KMS Corporate Practice of Medicine Principles
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- A physician's paramount ethical and legal responsibility is to his or her patients, and it should not be altered by the employment arrangement in which a physician practices, or the method by which the physician is compensated.

- Because an employed physician also owes a duty of loyalty to his or her employer, this divided loyalty has the potential to undermine the patient-physician relationship and create conflicts of interest, such as when a corporate employer seeks to impose or substitute its judgment for that of the physician in patient care matters.

- Employed physicians should be free to exercise their independent professional medical judgment regarding the appropriate diagnosis, care and treatment of their patients.

- In any situation where the economic or other interests of the employer are in conflict with patient welfare, it is the physician's ethical responsibility to advocate for the priority of patient welfare.

- Physicians should always make treatment and referral decisions based on the best interests of their patients. Patients must be clearly informed of all agreements or other understandings, be they explicit or implicit, that restrict, discourage, or encourage particular treatment or referral options set forth by an employer to their employed physician(s).

- Physicians who hold administrative leadership positions that can override the individual patient care decisions of other physicians are themselves engaged in the practice of medicine and are subject to professional ethical obligations and should be legally responsible for such decisions.

- Physicians should be free to enter into contractual arrangements, including employment, with hospitals, health care systems, medical groups, insurance plans, and other corporate entities as permitted by law, so long as those arrangements are consistent with these principles and not in conflict with the ethical principles of the medical profession.

- Any entity that employs (either directly or by contract) physicians to practice medicine should be held to the same ethical and legal responsibilities to the patient as the physicians they employ are.