



Board of Examiners in Optometry

February 2019 Newsletter

POLICY REGARDING KANSAS OPTOMETRISTS WORKING IN A FEDERALLY QUALIFIED HEALTH CENTER (“FQHC”)

Adopted: April 16, 2018

It is the policy of the Board that the Kansas Optometry law does not prevent a Kansas licensed optometrist from working in a FQHC. The analysis leading to adoption of this policy:

Generally, a Federally Qualified Health Center (“FQHC”) is a non-profit center that meets the requirements for federal funding under 42 U.S.C. § 1396d (1) of the Public Health Service Act and has been designated as an FQHC by the federal government.

K.S.A. 65-1524 provides that non-professional corporations and non-professional limited liability companies cannot practice optometry. Notwithstanding K.S.A. 1522(c) provides that a Kansas Optometrist may practice in a medical facility, medical care facility or a governmental institution or agency.

The Optometry Act defines “medical facility” by referencing the definition found at K.S.A. 65-411 and defines “medical care facility” by referencing the definition found at K.S.A. 65-425.

K.S.A. 65-411(c) provides:

“(c) ‘Medical Facility’ includes public health centers, psychiatric hospitals, health maintenance organizations as defined in K.S.A. 40-3202 and amendments thereto; medical care facilities as defined in K.S.A. 65-425 and amendments thereto; adult care homes, which term shall be limited to nursing facilities and intermediate personal care homes as these terms are defined in K.S.A. 39-923 and amendments thereto; kidney disease treatment centers, including centers not located in a medical care facility; and other facilities as may be designated by the secretary of health, education and welfare for the provision of health care.”

K.S.A. 65-425(h) provides:

“(h) ‘Medical care facility’ means a hospital, ambulatory surgical center or recuperation center, but shall not include a hospice which is certified to

participate in the Medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provides services only to hospice patients.

In *St. Francis Regional Medical Center, Inc. v. Weiss*, 254 Kan. 728, 869 P.2d 606 (1994) the Kansas Supreme Court examined whether a general corporation (the hospital) could employ a physician. In the earlier case of *Early Detection Center, Inc. v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991), the Supreme Court had held that a non-professional for profit corporation could not employ a physician. In holding that St. Francis could employ a physician, the Court reasoned:

“We agree that *Early Detection Center* should not be extended beyond its facts and is distinguishable from the present case. Here, the corporation employing the physician is a hospital licensed by the State of Kansas as a medical care facility and a health care provider. This difference is crucial to our determination and it distinguishes a hospital from a ‘diagnostic clinic’, which was involved in *Early Detection Center*.

In light of the above, we conclude that neither Kansas case law nor statutory law prohibits a licensed hospital from contracting for the services of a physician. Such contracts are not contrary to the interest of public health, safety, and welfare and, therefore, are legally enforceable. We find no valid reason to distinguish between profit and nonprofit hospitals in this regard.”

St. Francis v. Weis, 254 Kan. at 746.

The policy considerations which led the Supreme Court to conclude that the State’s public policy would not be violated by a hospital employing a physician would seem to lead to the conclusion that an Optometrist should be permitted to work for an FQHC. The Kansas legislature has specifically provided that an FQHC can employ a Kansas licensed dentist. Although there is no similar provision in the Kansas Optometry Law, there is no rational basis to conclude that protection of the public requires Optometrists not to be employed by an FQHC when a dentist can be so employed.

It is not clear that the legislature specifically intended the definitions of “medical facility” or “medical care facility”, as used in the Optometry Law, to include an FQHC, but there certainly appears to be no compelling reason to conclude that the Optometry Law prevents an Optometrist from working in an FQHC.

Business Contracts

Topics associated with business contracts are issues that frequently come before the Board. The Board wishes to remind licensees to review any contracts and business agreements carefully before signing. Understand the Kansas Optometry Act as well the Kansas Professional Corporation law.

Advertising

The Board wishes to remind licensees that the Optometry Act specifically addresses regulations associated with advertising:

65-11-1. Responsibility. (a) *Each licensee shall be responsible for any advertising which is designed to benefit the licensee, directly or indirectly, whether or not the licensee authored it or caused it to be published.*

(b) *Each licensee whose name, trade name, assumed name, office address, phone number or place of practice appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, allowed, permitted, approved, or sanctioned the advertisement and shall be personally and professionally responsible for its content and character.*

SUBMITTING CE TO ARBO

Did you know that submitting your CE to ARBO can be as easy as snapping a picture of it with your phone? With the OE Tracker App, it can be as easy as that. For additional information on the OE Tracker App, click [here](#).

The Board has paid everyone's OE Tracker fee for the year – all hours must be submitted directly to ARBO. DO NOT SEND CERTIFICATES TO THE BOARD OFFICE. The Board office will not forward any certificates to ARBO.

Sale of Contact Lenses Without a Prescription

In May 2018, THEG, a.k.a. Fine and Clear, d.b.a. Rainbowlens.com, was fined \$30,000 by the Texas Attorney General for violations of the state's Consumer Protection laws for the sale of contact lenses without a prescription. Despite the fine, the Attorney General became aware that the company continued their business practices and filed a second injunction seeking a Permanent Restraining Order and additional civil penalties in the \$200,000 to \$1,000,000 range.

KSSBEO filed a complaint regarding the sale of contact lenses without prescription at Bunny's Beauty Supply in Kansas City, Kansas. In October 2018, a Permanent Restraining Order was issued in Wyandotte County Court and, should the sale of contact lenses without a prescription continue, the court may impose additional civil penalties.

In December 2018, the Federal Trade Commission fined HollywoodColorContacts.com \$575,000 for violating FCLCA (Fairness in Contact Lenses Consumer Act). The company was ordered to pay \$60,000 provided that the sale of contact lenses stops, but should sales continue, they will be required to immediately pay the remaining balance.

KSSBEO is aware that some businesses are not following the regulations and statutes regarding the sale of contact lenses and that both Rainbow Lenses and Hollywood Color Contact lenses are

being sold in the state. Despite these developments, complaints by licensees to the FTC, Kansas State Board of Healing Arts, and KSSBEO continue to be important so that agencies with the power to regulate can do so. THEG's business practices were reported after the May 2018 Restraining Order which caused the Attorney General to respond otherwise the agency would have moved on to a different consumer protection issue and sales would have continued. If you are aware of questionable contact lens business practices, please report them.

CONTACT LENS PROVIDERS

If you have any complaints against a contact lens provider – whether it be if they are not registered with Kansas Board of Healing Arts (BOHA) or if they change a prescription – you will need to file a complaint with BOHA. The complaint form can be found [here](#).

You should also file a complaint to the Federal Trade Commission. Information to file a complaint with the FTC can be found [here](#).

The list of registered and unregistered contact lens can be found on BOHA's [website](#).

Volunteering for Free Clinic

KSSBEO does not have any policy concerns with licensees volunteering for Free Clinics, as long as the licensee practices in a manner to meet the state statutes and regulations. In particular, licensees are reminded to have a copy of their Kansas Optometry License conspicuously displayed. This is per KAR 65.10-, which states: *A licensee shall display a separate original license at each office or practice location.*

Licenses Retired and Expired

Licenses retired in 2018:

Karen S Aldridge
Douglas E Ball
Douglas G Biggs
Steve T Cauble
William L Crawford
Kevin L Dawes
Ronald D Fisher
Stephen R Geist
Mark S Glenn
William F Hefner
Ronald M Jackson
David C Lewerenz
Richard K Marks

Licenses expired in 2018

Boyd K Gubler
Jill R McNaughton
Laura J Nennig
Pinto Ng

Did you know....

In 1909, the cost to apply for a Kansas Optometry License was only \$5.00. Today it is \$150.00. That's an increase of 3000% in 110 years.

In 2017, only 27% of renewals were completed within one day. In 2018, it was 65%. The reason for the dramatic increase – usage of the OE Tracker for maintaining continuing education credits.

Updated email addresses for the online driver's license renewals are sent on the first of every month to Kansas Department of Revenue. Keep that in mind when you update your email address, that you should still check your old one for a few days after the first of the month.