

**KANSAS BOARD OF EXAMINERS IN OPTOMETRY**

**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 is attached hereto.

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.