



MEMORANDUM

To: Senator Monnes-Anderson, Chair, Senate Committee on Health Care
Senator Kruse, Co-chair, Senate Committee on Health Care
Members of the Senate Committee on Health Care

From: Mark Bonanno, OMA General Counsel

Date: February 23, 2017

Re: SB 485

SB 485 seeks to amend the Oregon Professional Corporation Act. Specifically, the bill would amend ORS 58.375 which is Oregon’s codification of a state public health policy known as the “corporate practice of medicine doctrine.”

The policy behind this doctrine is intended to guard against corporate and business interests from interfering with the ownership and operation of physician practices. Medical and ethical interests of both the physician and patient cannot be secondary to business and corporate interests.

The doctrine has evolved to permit physicians to practice within business entities such as the professional corporation and, because licensing boards such as the Oregon Medical Board, only have jurisdiction over licensed individuals, not corporations which could not maintain a license to practice medicine, Oregon’s doctrine requires that physicians both control the ownership and management of the business entity.

ORS 58.375 is limited to the practice of medicine. The statute expressly applies to “a professional corporation organized for the purpose of practicing medicine” which is defined in Professional Corporation Act by reference to the Oregon Medical Practice Act at ORS 677.085. In short, ORS 58.375 is wholly about the practice of medicine by physicians.

Notably, ORS 58.375 does not apply to any other independently practicing health care provider, and does not operate to prevent an independent provider such as a nurse practitioner from owning or operating a professional corporation that renders health care services as permitted by the Oregon Nurse Practice Act.

Also notable, is the fact that the Professional Corporation Act specifically limits the purpose of a professional corporation to the rendering of professional services by licensees (see ORS 58.076). In other words, the professional corporation legal structure was created to allow licensed professionals to create a special business entity to allow professionals like physicians to form a business separate from themselves but also as a matter of public policy to not permit professionals to shield themselves from professional liability simply by incorporating. A licensed professional always remains responsible for

their own acts or omissions regardless of whether they practice as a sole proprietor or within a professional corporation.

The doctrine was modified in 2007 to allow for corporate control of an organization providing medical services as long as the corporation was a nonprofit corporation under Oregon law that was organized for the purpose of being either a federal health center or Federally Qualified Health Center. Both federal designations are intended to provide access to medical care for medically underserved populations. OMA supports that public health policy.

That is the policy backdrop of the Act and the doctrine at issue today.

The introduced version of SB 485 carves out a new exception to the doctrine for entities that provide only palliative care or operate a rural health clinic as defined by a citation to another federal law that defines the term “rural health clinic.” This exception is similar to one proposed in 2015 through SB 880. SB 485 goes on to add another second exception to the doctrine to allow for-profit business entities to engage in the practice of medicine if the business derives 50 percent or more of its revenue from providing care to Oregon residents in areas that are either federally designated as a health professional shortage area or medically underserved area, or if the Oregon Health Authority or Office of Rural Health has designated the area as medically disadvantaged.

With respect to the concept of palliative care, the definition of palliative care comes from the Oregon Workers’ Compensation Program and it means “medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition” (ORS 656.005). The term is rather broad and the OMA is unclear about the rationale for carving this out from the definition of the practice of medicine.

With respect to the concept of a rural health clinic, the proposed reference to a federal “rural health clinic” has no safeguard similar to the current safeguard applicable to FQHCs that they be operated by a nonprofit corporation whose mission is to provide services to medically underserved populations.

With respect to the concept of a “50% rule,” there is no clear concept of which state administrative agency would oversee or enforce such a new rule. Further, we are talking today about a significant shift in public policy that would permit a for-profit business such as a private corporation or “Inc.” to engage in the practice of medicine without any ownership or fiduciary oversight from a physician licensed in Oregon.

OMA has concerns about this legislative concept and what entities want to engage in the practice of medicine without prioritizing physician interests as the primary driver in the business entity to ensure that medical and ethical interests are paramount to pure business interests.

For the reasons above, the OMA respectfully opposes SB 485.

The Oregon Medical Association is an organization of over 8,100 physicians, physician assistants, and medical students organized to serve and support physicians in their efforts to improve the health of Oregonians. Additional information can be found at www.theOMA.org.