OREGON AMBULATORY SURGERY CENTER ASSOCIATION
Our Patients Come First

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Re: Testimony for HB 3225 and HB 3227

The Oregon Ambulatory Surgery Center Association represents the interests of the 91 licensed ASC facilities throughout Oregon. Our mission is to be a resource for facilities, be a unified voice for advocacy, and help promote patient safety through education.

There have been several bills that impact ASCs, regarding control of a professional corporation, as well as noncompete agreements. These bills target Management Service Organizations (MSOs) as categorically bad for healthcare.

Over the years, the structure of ASCs has shifted. ASCs originated under the hospital license, and then were primarily independent facilities that were wholly physician owned. We have seen an increased trend of facilities utilizing MSOs as a partner to achieve increased resources for compliance, as well as cost savings with the economies of scale. Each partnership is carefully navigated with the physician owners to create a meaningful relationship that achieves higher patient safety and satisfaction, along with streamlined cost savings.

The bills, as presented, will functionally limit the investment made into Oregon ASC facilities. This very likely will create a contraction in the number of licensed facilities around the state, as well as hinder new development. The practical effect is to reduce the access to care for patients around the state.

HB 3225, as drafted, is clear to ensure that physicians maintain full control of the facility operations by having majority vote. At a high level, OASCA absolutely agrees that all *medical* decisions made by physicians for the benefit of patients should be unfettered by corporate interests. However, requiring a majority interest in each class of voting shares will have an end effect of disincentivizing MSOs from providing investment into ASC facilities. The majority interest has been used as a security interest in their cash infusion in these facilities. A cash infusion that otherwise may not have been available and would have forced that facility to close down permanently.

Also, what happens when there is a majority interest held by an MSO currently and the physicians don't have the cash to buy out the MSO interest to regain the majority? This bill does not contemplate existing contractual agreements that were entered into

intelligently, voluntarily and within the laws of Oregon at the time of execution. There should be more flexibility afforded to existing agreements, if the majority physician requirement were applied to new agreements executed in the future.

Similarly, HB 3227, as drafted, aims to restrict the enforceability of noncompete agreements, particularly those that have a contract or other arrangement with a management service organization. At larger ASC practices around the state, an ownership interest can many times be less than 10% per owner. These individuals still obtain valuable trade secret information about that facility, but then are allowed to forego a noncompete agreement and open up a competing facility across the street. Additionally, if a facility has any contract or other arrangement with a MSO, then the noncompete agreements are unenforceable. This also creates a disincentive for investment in ASCs around Oregon, as ones with a partnership with a MSO are placed at a disadvantage as opposed to fully independent facilities.

We want to be clear that we fully support independent physicians and their ability to operate an ASC, including providing incentives for those smaller practices to succeed in providing the best level of patient care possible. However, creating a situation where the lifeline of funding that comes with involvement of MSOs to these necessary healthcare facilities is staved off will only end up harming patients throughout Oregon.

Thank you for your time and consideration of this matter.

Respectfully,

Christopher D. Skagen
OASCA Executive Director