Testimony Before the
Senate Judiciary Committee regarding SB 483-1
Presented by Gwen Dayton, JD
on behalf of the Oregon Medical Association
February 14, 2013

Chair Prozanski, Vice-chair Close, members of the committee, I am Gwen Dayton, General Counsel for the Oregon Medical Association. I am pleased to testify in support of SB 483-1. SB 483, with the -1 amendments, creates an early discussion and resolution process. This process will create a voluntary process for health care providers and health care facilities to have a thoughtful and open conversation with patients about adverse incidents that may have occurred in their care and to resolve the matter without litigation. This is not just about apologizing for medical errors; it is about creating a structure for responsible discussion regarding unexpected, serious outcomes in care in a way that supports both patients and providers.

This proposal is also about patient safety. The Oregon Patient Safety Commission is charged with accepting notices of adverse health care incidents and using those notices to educate and reach out to health care providers to prevent similar incidents from happening again.
This is not a new concept. While Oregon is unique in making this a statewide program, other states have engaged in similar early discussion and resolution programs and have found success.

Details of the process:

- If an adverse health care incident occurs, a patient, health care provider or health care facility **may** (not mandatory) file a notice of adverse health care incident with the Oregon Patient Safety Commission
- After the notice is filed, the health care provider or facility **may** (not mandatory) have a discussion with the patient regarding the incident.
- This early discussion is confidential in any later litigation except: If a patient, health care provider or health care facility says something in any later trial that is contradictory to something said in the early discussion, and the contradiction is material, the contradictory statement may be admitted into evidence at the trial.
- If the early discussion does not resolve the matter, the parties **may** go to mediation, but are not required to do so.
- If there is an offer of compensation and that offer is accepted, the health care provider or facility may require the patient to sign a release of future liability.
- The statute of limitations is tolled for 6 months after filing of the notice.

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- Professional liability carriers may not deny coverage based on participation in this process, but may impose reasonable requirements or policy provisions for coverage.
- The legislation creates a Taskforce of Resolution of Adverse Health Care Incidents to monitor the program.
- The legislation sunsets after 10 years, in 2023.

-1 amendments:

- Add Certified Registered Nurse Anesthetists to the definition of health care providers
- Provides that evidence of participation or non-participation in the process is not admissible in any litigation.
- Clarifies that professional liability carriers may impose reasonable policy provisions on participants.
- Adds a hospital representative and a patient safety advocate to the taskforce.
- Clarifies taskforce charge.

Thank you for your support for this bill.

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Attachment 1: Abbreviated Summary of Discussion and Offer Programs in Other States

The model system for most disclosure and offer programs was established at the University of Michigan Health System (UMHS) in 2001. The UMHS liability claims experience as well as available data from comparable systems is shown below.

UMHS	Average number of claims	Monthly rate of new claims (per 100,000 patients)	Monthly rate of lawsuits (per 100,000 patients)	Time to claim resolution	Average cost per lawsuit
Before (1995-2001)	53.2	7.03	2.13	1.36	$405,921
After (2001-2007)	31.7	4.52	0.75	0.95	$228,308

Source: Kachalia, Allen et al. "Liability Claims and Costs Before and After Implementation of a Medical Error Disclosure Program." Annuals of Internal Medicine. 153 (2010): 213-221. Web. 1 June 2012. <http://www.annals.org/content/153/4/213>

Stanford University Medical Center: Process for Early Assessment and Resolution of Loss (PEARL)

Between 2007 and 2011, claim frequency dropped 36% and $3.2M per fiscal year in savings was achieved.

Source: "Stanford Cuts Liability Premiums with Cash Offers After Errors." Accessed at: http://www.ama-assn.org/amednews/2011/10/31/prsb1031.htm

Colorado- COPIC Insurance Company: 3Rs Program (Recognize, Respond and Resolve)

Between 2000 and 2007, COPIC received 4,600 incident reports. Of the 4,600 incidents, 953 patients were compensated. On average, the patient was compensated $5,293.

Source: Lembitz, Alan. "Litigation Alternative: COPIC's 3Rs program." American Academy of Orthopaedic Surgeons. Web. 7 August 2012. http://www.aaos.org/news/aaosnow/sep10/managing7.asp

Kentucky Veterans Affairs Medical Center

A 15-year analysis (1987-2002) found that the average payout at the Kentucky VA facility was $14,500 per case, well below other VA facilities across the country (averaging $413,000 for malpractice judgments, $98,000 for pretrial settlements and $248,000 for settlements during trial).

Source: Agency for Healthcare Research and Quality. "Proactive Reporting, Investigation, Discisoure, and Remedying of Medical Errors Leads to Similar or Lower Than Average Malpractice Claims Costs." Web. 7 August 2012. http://www.innovations.ahrq.gov/content.aspx?id=2731

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Agency for Health Care Research and Quality (AHRQ) Grants

Many states have received Agency for Health Care Research and Quality (AHRQ) funded grants to investigate, implement and evaluate early disclosure and offer programs. Two of these states, ***Massachusetts*** *and* ***Washington****, have each implemented pilot programs that are testing the applicability of early disclosure and offer programs in varied practice settings with varied insurance arrangements.*

Other states with AHRQ grants: Texas, Utah, New York and Illinois.

The Oregon Medical Association is an organization of over 7,500 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.

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