

House Bill 3022

Sponsored by Representative CONGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that physician-patient privilege and nurse-patient privilege do not apply to communications made in course of any medical treatment received by patient after injury for which patient brings certain civil actions based on negligent or unauthorized medical treatment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to privileges; creating new provisions; amending ORS 40.235 and 40.240 and ORCP 44 E;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORCP 44 E is amended to read:

6 **E Access to individually identifiable health information.**

7 **E(1)** Any party against whom a civil action is filed for compensation or damages for injuries
8 may obtain copies of individually identifiable health information as defined in Rule 55 H within the
9 scope of discovery under Rule 36 B. Individually identifiable health information may be obtained by
10 written patient authorization, by an order of the court, or by subpoena in accordance with Rule 55
11 H.

12 **E(2) When a patient has filed a civil action based on negligence in the provision of health**
13 **care or unauthorized rendering of health care against a person licensed, certified or other-**
14 **wise authorized or permitted by the law of this state to administer health care in the ordi-**
15 **nary course of business or practice of a profession, or against a health care facility, as**
16 **defined in ORS 442.015, the health care provider or health care facility may obtain copies of**
17 **individually identifiable health information created in the course of medical treatment pro-**
18 **vided by any health care provider after the patient's injuries occurred.**

19 **SECTION 2.** ORS 40.235 is amended to read:

20 40.235. (1) As used in this section, unless the context requires otherwise:

21 (a) "Confidential communication" means a communication not intended to be disclosed to third
22 persons except:

23 (A) Persons present to further the interest of the patient in the consultation, examination or
24 interview;

25 (B) Persons reasonably necessary for the transmission of the communication; or

26 (C) Persons who are participating in the diagnosis and treatment under the direction of the
27 physician, including members of the patient's family.

28 (b) "Patient" means a person who consults or is examined or interviewed by a physician.

29 (c) "Physician" means a person authorized and licensed or certified to practice medicine or
30 dentistry in any state or nation, or reasonably believed by the patient so to be, while engaged in the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 diagnosis or treatment of a physical condition. "Physician" includes licensed or certified
 2 naturopathic and chiropractic physicians and dentists.

3 (2) A patient has a privilege to refuse to disclose and to prevent any other person from dis-
 4 closing confidential communications in a civil action, suit or proceeding, made for the purposes of
 5 diagnosis or treatment of the patient's physical condition, among the patient, the patient's physician
 6 or persons who are participating in the diagnosis or treatment under the direction of the physician,
 7 including members of the patient's family.

8 (3) The privilege created by this section may be claimed by:

9 (a) The patient;

10 (b) A guardian or conservator of the patient;

11 (c) The personal representative of a deceased patient; or

12 (d) The person who was the physician, but only on behalf of the patient. Such person's authority
 13 so to do is presumed in the absence of evidence to the contrary.

14 (4) The following is a nonexclusive list of limits on the privilege granted by this section:

15 (a) If the judge orders an examination of the physical condition of the patient, communications
 16 made in the course thereof are not privileged under this section with respect to the particular pur-
 17 pose for which the examination is ordered unless the judge orders otherwise.

18 (b) Except as provided in ORCP 44, there is no privilege under this section for communications
 19 made in the course of a physical examination performed under ORCP 44.

20 (c) There is no privilege under this section with regard to any confidential communication or
 21 record of such confidential communication that would otherwise be privileged under this section
 22 when the use of the communication or record is specifically allowed under ORS 426.070, 426.074,
 23 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or
 24 record to the extent and for the purposes set forth in the described statute sections.

25 **(d) There is no privilege under this section with regard to communications or records**
 26 **of communications made in the course of medical treatment provided to the plaintiff by any**
 27 **physician after an injury for which the plaintiff has commenced a civil action against a per-**
 28 **son licensed, certified or otherwise authorized or permitted by the law of this state to ad-**
 29 **minister health care in the ordinary course of business or practice of a profession, or against**
 30 **a health care facility, as defined in ORS 442.015, based on negligence in the provision of**
 31 **health care or unauthorized rendering of health care.**

32 **SECTION 3.** ORS 40.240 is amended to read:

33 40.240. (1) A licensed professional nurse shall not, without the consent of a patient who was
 34 cared for by such nurse, be examined in a civil action or proceeding, as to any information acquired
 35 in caring for the patient, which was necessary to enable the nurse to care for the patient.

36 **(2) There is no privilege under this section with regard to communications or records of**
 37 **communications made in the course of medical treatment provided to the plaintiff by any**
 38 **nurse after an injury for which the plaintiff has commenced a civil action against a person**
 39 **licensed, certified or otherwise authorized or permitted by the law of this state to administer**
 40 **health care in the ordinary course of business or practice of a profession, or against a health**
 41 **care facility, as defined in ORS 442.015, based on negligence in the provision of health care**
 42 **or unauthorized rendering of health care.**

43 **SECTION 4.** The amendments to ORCP 44 E and ORS 40.235 and 40.240 by sections 1 to
 44 3 of this 2013 Act apply only to civil actions commenced on and after the effective date of
 45 this 2013 Act.

1 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
3 **on its passage.**

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