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OREGON STATE SENATORS

900 Court St. NE

Salem, Oregon 97301

Ref: Testimony to Senate committee on SB 279

Senators:

I am testifying today with the hope of exposing the injustice of the Oregon government perpetrated upon me and my family by the Oregon Medical Board (OMB). I owe a duty to my former patients, fellow doctors and my children to raise these issues of injustice which continue unabated here in Oregon. As legislators of our State, we demand you exercise your legislative duty towards this State's true constituents and deny OMB the passage of SB 279. The need for more power and autonomy to increase their authority is in my mind abhorrent.

I state emphatically that OMB and the Oregon Department of Justice (DOJ) violated of my 1st Amendment and Due Process rights of the 5th and 14th Amendments under the U. S. Constitution which resulted in the deprivation of my medical license.

In January 2014, I provided all Oregon Senators a document similar to what I am sharing here today in the hope that one of them would step forward and show an interest. In that document, I requested a hearing of these issues which I am about to once again address here today. None of the Senators showed any interest in my case or even acknowledged my request.

I previously filed formal Complaints and Requests for a Hearing with Senators Monnes-Anderson and Prozanski and their respective committees they chaired in September 2010 to no avail. I met with Senator Monnes-Anderson several times including once with my wife Sarah and our daughter in Gresham. Sen. Monnes-Anderson verbalized concern and stated she had heard complaints. She gave us the impression she would do something considering the impact this injustice had on our young family. We never heard again. I spoke with Sen.

Prozanski. All he could recommend was that I exhaust my legal remedies in Oregon and contact the Oregon bar for counsel. Neither senator offered to present my request to the Oregon Senate, nor was anything further heard from either senator.

In October 2012, there was excitement over doctor-Senators Elizabeth Steiner-Hayward and Alan Bates' public meeting with OMB. However, nothing of significance ever emerged except OMB denial and acquiescence by Bates and Steiner-Hayward.

Specifically, with respect to my case before OMB, in 2006 my wife's private emails were hacked by one of her relatives, and under governmental coercion, turned over to OMB. At that time, my wife was my office manager, before we got married.

Subsequently, the OMB knowingly and willfully used these hacked emails to build their case of revocation against me, which financially harmed me professionally and economically even though my wife and I were married and with a 13 month old baby girl. Pursuant to the aforesaid facts, in April 2010, OMB revoked my license through a farce judicial process known as administrative law.

As a consequence of indifferent and ineffective legal counsel by a string of Oregon attorneys, I appealed to the Oregon Court of Appeals on my own (CA No: A145526) and filed an Opening Brief in October 2010. The Oregon Assistant Attorney General representing OMB filed an Answer Brief January 2011. I immediately filed a Reply Brief.

In April 2011, the 3-judge Appellate Court panel affirmed OMB action without an opinion. They ignored the constitutional legal issues raised in my Brief. I then exercised my right to review *de novo* by the Court. On July 8, 2011 these same judges denied my petition for reconsideration without writing a single word. The Court had acted with deliberate judicial indifference.

At this point, I had exhausted my judicial remedies in the Oregon State courts regarding this travesty of justice perpetrated upon me by OMB.

So, in April 2012, I filed a federal civil lawsuit Complaint (42 USC 1983-No. 3:12-CV-00571-BR) in the U.S. District Court in Portland. After much scheming by the State and the federal judiciary in Portland, my case got fast-tracked. Astoundingly, a federal magistrate and an Article III Judge moved to dismiss my lawsuit in August ignoring the U.S. Constitution issues raised in the Complaint. In October 2012, I filed an Emergency Motion with the 9th Circuit Court to obtain temporary relief from a "distrainment warrant" that the aggressive OMB and the Oregon Department of Revenue (ODOR) sought to enforce against me for \$34,844.94 for their "Bill of costs". A stay was granted until April 29, 2013 while we awaited the birth of our 2nd child. The clear intent of this maneuver was

to cause further harm to me and my family in an attempt to quash any further legal action on my part.

Having been dismissed in the U.S. District Court in Portland, I filed an Opening Brief (No. 12-35705) to the U.S. Court of Appeals for the 9th Circuit in December 2012. In mid-January 2013, the Oregon government (DOJ) filed their Appellee Brief to the Ninth Circuit Court on behalf of the OMB defendants, to which I immediately filed my Reply Brief.

In the midst of all this financial harm, economic ruin and oppression inflicted upon my family, we were blessed with our second daughter in April 2013. However, ODOR and OMB continued to pursue their "Bill". This distinct "over-kill" by a board desperate for funds constitutes yet another violation of the U.S. Constitution, that of the 8th Amendment of cruel and unusual punishment. As a consequence of the government's unlawful conduct against me, relative to their final order from April 2010, my family and I are left without a meaningful income for the past 5+ years, not to mention the emotional anguish.

Moreover, I was compelled by the foregoing economic ruin to accept early Social Security retirement and my wife had to leave her role as the primary caregiver of the family to work in order to support our family. We waited in prayer for injunctive relief requested in the federal Brief. Relief never came as the 9th Circuit dismissed and denied my motion for reconsideration in October 2014. The Court thus condoned the district court's assertions of sovereign or absolute immunity (like kings and emperors) and special governmental privileges over the common U.S. citizen by the State. This insult smacks in the face of 200 years of our American history. By this behavior, the Court allowed the OMB and State of Oregon to hide behind a veil of secrecy beyond the reach of the common citizen. This tyrannical behavior and lack of transparency in my case by the all the courts reminds us of behavior seen in the Axis that spawned WW II and established in the Cold War. But it is here today in America. Boards across the U.S.A. often cite their supposed absolute authority as a mandate to protect the public from certain physicians who in their special interest opinion represent a threat. In reality, the threat the OMB and its special interest fear is financial under this guise of public protection (please see attached pie charts delineating DOJ funding). This is our tax dollars at work or at waste. And, why not? Most folks go along with this behavior having been fed a diet of insecurity and need for governmental protection.

In light of the foregoing, my wife and I respectfully ask and pray that this Oregon Senate take a position against SB 279 now. Hold further hearings as necessary. Open this issue up to the public and the media before taking legislative action. Write meaningful DUE PROCESS language into the UNCONSTITUTIONAL text of ORS chapter 677, reprimand OMB and DOJ and

provide injunctive relief for harmed Oregon doctors and families. Executive Director Kathleen Haley should resign. She has been there too long and done a lot of damage. We recall the Dr. Phillip Alberts scandal of 1994-95 when OMB lied to the legislature. OMB and the DOJ interpret ORS 677 however it suits. The abuses by them will continue and only worsen. You senators need to act now to stop the massacre of innocent Oregon physicians persecuted at the whim of special interests. In addition, the senators should review the minutes of their own committee meeting reference SB 267 from Feb. 7, 1983, page 7 at item 065 and 066, where mutually assured destruction of physician careers is insured when Senator Ripper asks about physician revocation in Oregon (see attached document entitled Senate Committee on Business & Consumer Affairs), and Mr. Ulwelling replies essentially that the physician is revoked in every State. This is especially true today with the Internet and the DataBank operated by the feds (DHHS). This attitude prevailed then as it does now. OMB believes it is and was doing a good job to insure a physician would probably never work again in America. OMB boasts about this in their reports with arrogance unbecoming to an agency of government supposedly representing all the people. This behavior needs to end in Oregon. With the current legislative regime deliberately intending to deprive doctors of due process of law, no well-informed physician will come to practice in Oregon.

## Judicial Department (OJD) – Agency Totals

	2007-09 Actual	2009-11 Legislatively Approved	2011-13 Governor's Recommended	2011-13 Legislatively Adopted
General Fund	310,336,253	284,351,512	297,215,227	359,234,028
Other Funds	44,642,997	84,649,199	70,675,474	24,966,976
Federal Funds	829,955	1,119,163	884,626	850,613
Other Funds (NL)	9,721,566	0	0	0
<b>Total Funds</b>	<b>\$365,530,771</b>	<b>\$370,119,874</b>	<b>\$368,775,327</b>	<b>\$385,051,617</b>
Positions	2,077	1,891	1,870	1,878
FTE	1,828.35	1,833.14	1,840.78	1,739.20

### Agency Overview

The Judicial Department (OJD) includes the judges and administrative staff to operate general-jurisdiction trial or circuit courts, a tax court, an intermediate court of appeals, and a supreme court. Oregon's 36 counties are consolidated into 27 judicial districts. Oregon's Justice, County, and Municipal courts fall outside the jurisdiction of the agency.

In 1983, Oregon's district courts, circuit courts, and appellate courts were unified into a statewide court system. In 1998, district courts were abolished and merge with circuit courts into single unified trial level courts. The Department's other responsibilities include the collection of court-ordered judgments, providing court interpreters, and state court security.

The chief justice appoints the chief judge of the Court of Appeals and the presiding judges of all state trial courts. The chief justice also appoints the state court administrator position, which was officially created in 1971.

The chief justice is the administrative head of the Department and has the authority to make rules and issue orders related to the administrative and procedural operations of state courts. The *Judicial Conference*, comprised of all elected judges, serves an advisory role. The Department's administrative proceedings are generally not open to the public.

The Department is unique in many aspects. It has a decentralized structure of independently elected judges and non-uniformed employees who are overseen by a single administrative head (i.e., the Chief Justice). Circuit court judges and staff work in county-owned and county-maintained buildings. Each presiding judge exercises a degree of autonomy in prioritizing the budget for local courts depending upon the needs of local jurisdictions.

The Department's 1,878 positions (1,739.20 FTE) are organized into the following program areas:

- **Judge Compensation** (\$62.9 million, 191.00 FTE) is the personal service costs of the state's 191 statutory judgeships.
- **Appellate Courts** (\$16.7 million, 84.08 FTE) are the Supreme Court, Court of Appeals, Tax Court (a circuit-level court), and legal support cost.
- **Trial Courts** (\$183.1 million, 1,257.56 FTE) are the courts of general jurisdiction. A circuit court is located in each of Oregon's 36 counties. Circuit courts are organized administratively into judicial districts. Some of these, primarily rural, districts include more than one circuit court. However, most of the 27 judicial districts comprise a single circuit court.
- **Administration and Central Support** (\$76.4 million, 147.25 FTE) includes the Office of the State Court Administrator, information systems management, fiscal and human resources management, and centralized state agency assessments.
- **Revenue Management/Collections** (not discretely budgeted) is the program for collection of amounts owed to the state that are subject to collection by the Judicial Branch of government. In general, collections are for past-due crime victim restitution payments, compensatory fines, and other fines, costs, and assessments.
- **Mandated Payments** (\$13.4 million, 23.00 FTE) includes the cost of providing trial and grand jurors, court interpreters, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act accommodation services.

**Judicial Department (OJD) – Agency Totals**

	2005-07 Actual	2007-09 Legislatively Approved	2009-11 Essential Budget Level	2009-11 Legislatively Adopted*
General Fund	282,060,774	310,355,186	348,048,319	299,252,533
Other Funds	21,671,803	50,619,467	36,072,994	56,102,359
Federal Funds	1,478,760	1,013,463	1,047,391	859,163
Other Funds (NL)	9,481,442	10,907,966	10,233,769	0
<b>Total Funds</b>	<b>\$314,692,579</b>	<b>\$372,886,082</b>	<b>\$395,402,473</b>	<b>\$356,214,055</b>
Positions	2,039	2,074	2,065	1,857
FTE	1,871.21	1,908.46	1,923.13	1,684.34

\* Includes the Governor's line-item veto of section 61(6), HB 5054 of \$6.2 million General Fund

**Agency Overview**

The Oregon Judicial Department's (OJD) current program structure includes:

- **Judge Compensation\*** is the personal service costs of the state's 191 statutory judgeships.
  - **Appellate Courts** are the Supreme Court, Court of Appeals, Tax Court (a circuit-level court), and legal support cost.
  - **Trial Courts** are the courts of general jurisdiction. District courts were abolished effective January 15, 1998 and circuit courts assumed jurisdiction for all state trial court functions. A circuit court is located in each of Oregon's 36 Counties. Circuit courts are organized administratively into judicial districts. Some of these, primarily rural, districts include more than one circuit court. However, most of the 27 judicial districts comprise a single circuit court.
  - **Administration and Central Support** includes the Office of the State Court Administrator, information systems management, fiscal and human resources management, and centralized state agency assessments.
  - **Mandated Payments** includes the cost of providing trial and grand jurors, court interpreters, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act accommodation services.
  - **State Court Facilities Security Account\*** provides funding for security improvements, emergency preparedness, and business continuity for Oregon's circuit, appellate, justice, and municipal courts.
  - **Electronic Court ("eCourt")\*** provides funding for a business process reengineering and information technology modernization program.
  - **Debt Service\*** provides for Debt Service on certificate of participation financing used to finance Electronic Court.
  - **Capital Improvement/Capital Construction\*** is used to fund improvement to the Supreme Court Building.
- \* program structures which are new for the 2009-11 biennium

The Department is also in the process of moving its General and Other Funds Revenue Management activities into a discrete program structure as directed by a budget note.

**Revenue Sources and Relationships**

In the 2007-09 biennium, OJD will generate an estimated \$272 million in revenue from fines, assessments, forfeitures, filing fees, and individuals' contributions toward their public defense. The Department will retain approximately 8% to fund the actual costs of the Department's collections program, including funds used to reimburse the Department of Revenue and private collection agencies for their costs from collection of delinquent debt. Compensatory fines and restitution, which are expected to total \$27.1 million, are also collected by the courts and distributed to individual victims. Because these are trust funds, they are not accounted for in the Department budget nor are they subject to the Department's collection withholding.

Other sources of operating Other Funds revenue include the sale and distribution of court publications; fees charged for public access to the Oregon Judicial Information Network; State Law Library fees; fees charged for the interpreter and shorthand reporter certification programs; fees collected in the public defense Application Contribution Program; grants from the Department of Human Services for the Citizen Review Board; and various grants from other state and federal agencies. Direct Federal Funds come from a grant for a Juvenile Court Improvement Project.

## Department of Justice (DOJ) – Agency Totals

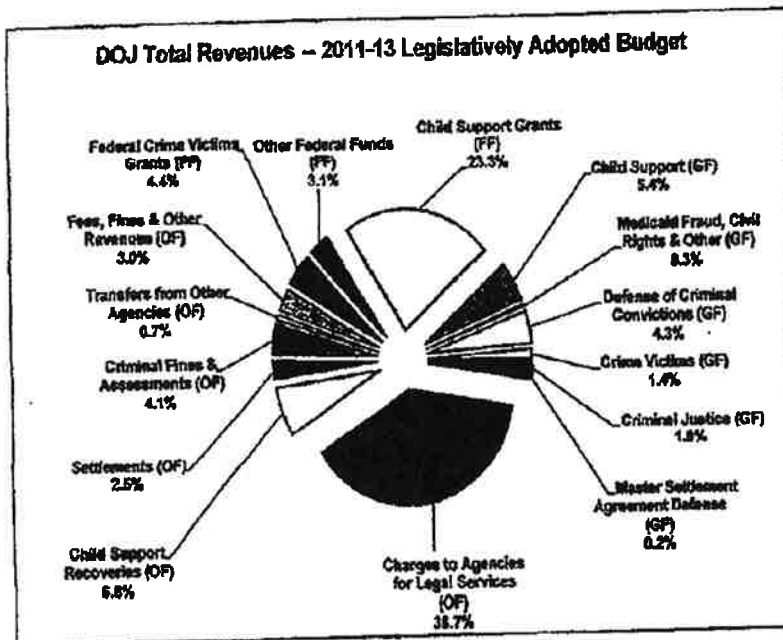
	2007-09 Actual	2009-11 Legislatively Approved	2011-13 Governor's Recommended	2011-13 Legislatively Adopted
General Fund	49,089,856	51,826,586	57,936,559	53,992,283
Other Funds	212,129,591	220,351,243	220,424,143	225,622,550
Federal Funds	96,755,005	113,790,396	114,083,393	107,968,730
Other Funds (NL)	6,174,218	11,565,355	10,622,670	10,622,670
Federal Funds (NL)	15,083,540	15,857,750	15,285,103	15,285,103
<b>Total Funds</b>	<b>\$379,232,210</b>	<b>\$413,391,330</b>	<b>\$418,351,868</b>	<b>\$413,491,336</b>
Positions	1,331	1,348	1,322	1,290
FTE	1,303.85	1,328.28	1,312.55	1,270.80

### Agency Overview

The Department of Justice (DOJ) is responsible for general legal counsel and supervision of all civil actions and legal proceedings in which the state is a party or has an interest. State statute places responsibility with DOJ for all the state's legal business that requires an attorney or legal counsel. DOJ is also responsible for a number of programs, including child support, district attorney assistance, crime victims' compensation, charitable activity enforcement, organized crime-related law enforcement, and consumer protection and education services.

### Revenue Sources and Relationships

The Department of Justice relies on a variety of funding sources. For the 2011-13 biennium, the General Fund accounts for 13.1% of the legislatively adopted budget and is used primarily for the Child Support Program, Defense of Criminal Convictions, crime victims' programs, legal work for which no state agency can be billed directly (e.g., ballot measure related), and the law enforcement activities of the Criminal Justice Division. Expenditures funded with Other Funds sources of revenue make up 57.1% of the budget (including Nonlimited) and include charges to agencies for legal services, settlements, license and other fees, charges, and fines. Federal Funds (including Nonlimited) make up 29.8% of the budget and include the federal share of the Child Support and Medicaid Fraud programs, and crime victims' grants.



The chart above shows revenues by source which may be slightly different than expenditures by fund type. Almost 40% of the revenue is derived from the hourly charges to state agencies for legal advice, litigation, and other legal services. DOJ's legal services are billed not only to state agencies, but also internally. For example,

### Department of Justice (DOJ) – Agency Totals

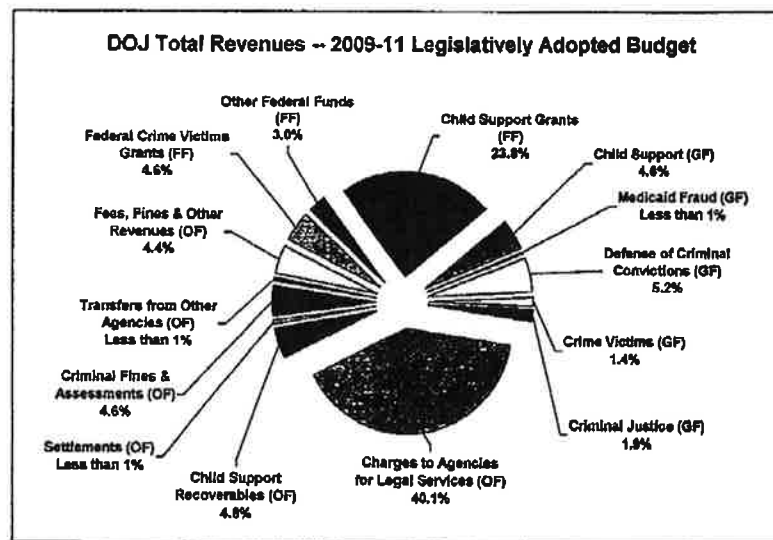
	2005-07 Actual	2007-09 Legislatively Approved	2009-11 Essential Budget Level	2009-11 Legislatively Adopted
General Fund	34,463,132	49,095,726	64,884,333	54,721,022
Other Funds	150,997,317	215,376,724	227,810,768	219,503,978
Federal Funds	77,909,995	100,277,305	104,152,120	110,855,247
Other Funds (NL)	5,215,356	8,594,005	7,988,839	7,871,355
Federal Funds (NL)	17,144,814	15,101,812	15,035,429	15,857,750
<b>Total Funds</b>	<b>\$285,730,614</b>	<b>\$388,445,572</b>	<b>\$419,871,489</b>	<b>\$408,609,352</b>
Positions	1,226	1,334	1,314	1,333
FTE	1,210.81	1,306.71	1,305.68	1,319.83

#### Agency Overview

The Department of Justice (DOJ) is responsible for general legal counsel and supervision of all civil actions and legal proceedings in which the state is a party or has an interest. State statute places responsibility with DOJ for all the state's legal business that requires an attorney or legal counsel. DOJ is also responsible for a number of programs, including child support, district attorney assistance, crime victims' compensation, charitable activity enforcement, organized crime-related law enforcement, and consumer protection and education services.

#### Revenue Sources and Relationships

The Department of Justice relies on a variety of funding sources. For the 2009-11 biennium, the General Fund accounts for 13.4% of the legislatively adopted budget (LAB) and is used primarily for the Child Support Program, Defense of Criminal Convictions, crime victims' programs, legal work for which no state agency can be billed directly (e.g. ballot measure related), and the law enforcement activities of the Criminal Justice Division. Expenditures funded with Other Fund sources of revenue make up 55.6% of the budget (including Nonlimited) and include charges to agencies for legal services, settlements, license and other fees, charges, and fines. Federal Funds (including Nonlimited) make up 31% of the budget and include the federal share of the Child Support and Medicaid Fraud programs, and crime victims' grants.



The chart above shows revenues by source which may be slightly different than expenditures by fund type. More than 40% of the revenue is derived from the hourly charges to state agencies for legal advice, litigation, and other legal services. DOJ operates similar to a law firm in that its legal services are billed not only to state agencies, but also internally. For example, the Trial and Appellate Divisions bill the Defense of Criminal Convictions Fund to cover costs of defending challenges to criminal convictions which are not billable to other



054 CHAIRMAN YIH asked if any of the professional groups have objected to the change in fees.

055 MR. ULWELLING stated that everyone of their advisory bodies have reviewed these and they have heard no objection.

065 SENATOR RIPPER asked if someone has a license revoked in Oregon if it is also revoked in other states.

066 MR. ULWELLING replied that that is true and they can virtually say that if a physician loses his license in Oregon that he is probably not going to be able to practice in the United States. There is a clearing house that posts all the disciplinary actions taken by every state. In addition a state also contacts the other states where a physician has a license so there are two ways you find out.

082 CHARLES KELLY, President, Volunteer Ambulance Association of Oregon, and EMT IV and manager for Molalla Ambulance. He would like to call the committee's attention to that portion of the bill with regard to the waiver of fees for volunteers. They don't object to the idea of the fee. They are concerned that it will come into effect July 1, 1983 and will not allow time for budgeting. He is not sure, but it may create significant problems for that 186 volunteer EMT's.

093 If the fee schedule that is proposed is adopted, they are concerned that one of the underlying incentives to review pre-hospital care may be eroded to the point where they feel pre-hospital care doesn't exist as a system. It exists as a fragmentary entity of services and the state hasn't been able to put this together as a unified systemic program.

099 While the State Board of Medical Examiners have been very instrumental in developing standards and helping provide what they do have, and they are certainly not responsible for the disarray we see in the state, putting in a group who are funded may create a certain reluctance to change. There is some concern. In general, though, they do support the concept. They need funding and they need the examination process and they need certification.

115 JOHN ULWELLING stated he thinks Mr. Kelly makes a good point as far as the volunteers are concerned. If the committee would wish to choose a date to make that effective for that one specific section, he doesn't think the Board of Medical Examiners would have a problem with that. It would give the volunteers a year and one-half to adjust their budgets.

124 There has been a lot of discussion about putting the whole EMT program together and they have proposed to a task force that dealt with this prior to the legislature is that the Board of Medical Examiners is willing to sit down with the Health Division and have all interested parties, including the volunteers, and take a look at the whole program and put all the EMT's together either under the Health Division or the Board of Medical Examiners or a separate body. He doesn't think this budget would change any of that. They are not trying to build an empire and they are totally open to re-examine the whole process and are on record as willing to do that. They recognize that the whole EMT thing is rather split right now.

171 BRIAN NELSON, Legislative Chairperson of the Student EMT Association at Chemeketa Community College, and a certified EMT II in Oregon and working to complete an associate degree in Emergency Medical Technology including training to an EMT IV level.