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Friday, March 20, 2015

Oregon House Bill 2683

Testimony Before the Oregon House Committee on Health Care 78th Oregon
Legislative Assembly - 2015 Regular Session

Submitted: March 20, 2015 Public Hearing Date: March 20, 2015

Testimony by:

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HB 2683 Title: Relating to dentistry; declaring an emergency.

HB 2683 Catchline/Summary: Requires Oregon Board of Dentistry, upon request of individual who has been disciplined by board, to remove from its website and other publicly accessible print and electronic publications information related to disciplining individual if individual meets certain criteria. Declares emergency, effective on passage.

Dear Representatives:

My position on House Bill 2683: **In favor.**

Position Details:

As a retired physician who was previously licensed in MA and NC, I am all too well aware of the reputational damage resultant from licensing board actions.

While the original rationale behind such public informing may have been well intentioned, it is important to note that, in its present form, the information may serve more as a "scarlet letter" intending to shame the licensed professional, in this case the dentist, than inform the public. Further, as the corrective action has already been administered by the Dental Board and its affiliated assistance program and undertaken by the dentist, it makes little sense to continue to inform the public.

Additionally, it may be argued that such public shaming not only does not serve the public in any useful way, it further punishes the dentist and serves to increase

the likelihood of relapse in the event that the initial action was based on a substance abuse or mental illness concern.

Imagine the state of Oregon hanging a sign around your child for failing a subject in grammar school and then making your child wear that sign for life. This is not likely to engender public trust in your child as she or he grows into maturity. And it will destine him or her to a life of ostracism and marginalization. These are certainly not conducive to professional success; they're certainly not conducive to recovery.

As we have discovered in North Carolina through the efforts of the NC State Auditor (see PER-2013-8141 available at <http://www.ncauditor.net>), the NC Physicians Health Program has likely deprived over 1,140 physicians of due process in the evaluations they have received at the hands of this program. The NC Medical Board took action on these cases and acted on these physicians' licenses in various ways, including publishing their findings, under the guise of it being a public service or legally mandated. However, it should be noted that they were also legally mandated to oversee the legitimacy of the NCPHP assessment process and did not, as documented by the auditor. Further, in a separate audit, the auditor noted that NCMB as well as nearly all boards, operate with essentially no oversight or accountability. Consequently, their publishing these findings has resulted in severe harm and likely meets criteria for defamation.

It would be understandable for a regulatory authority to publish warnings about potentially dangerous practitioners. The criteria for such might be three fairly adjudicated board actions or something similar. The threat of publication itself might then be used as a deterrent and strong encouragement to seek treatment or suitable corrective remedy.

While I understand that this bill itself may be a compromise measure, I do not favor immediate and general access to material of such a personal nature and rather believe that a stratification of reasons for disciplinary actions needs to be established, depending on the nature of the offense. Further, if one truly believes that substance abuse or mental illness are in fact illnesses, then the publication of such constitutes an invasion of privacy and likely violates HIPAA and/or 42 CFR Part 2.

I concur with my colleague Mr. Christian Wolff in his testimony of 3/19/2015 that dentists as well as the sponsors of HB 2683 should consider altering their proposal such that the 10 year time reference written into this bill is amended to propose a significantly lesser amount of time required for eligibility for disciplinary action to be removed from actively maintained publications.

I would argue that we must cease this practice of having boards issue "Shame Postings" which are at their essence little more than indiscriminate, career-

ruining “scarlet letters.” If one allows these to persist, then I would suggest a comparable public listing for all legal departments and sitting members of Dental Boards individually indicating their complicity in abuse of authority, violation of due process and violation of confidentiality.

One additional consideration may be worth noting. The recent SCOTUS decision pertaining to the NC Dental Board which found in favor of the FTC determined that the Dental Board was actually a private trade group and not a legitimate state agency and, not being such, its members were not eligible for state immunity. In the event that publication of these findings, especially those that pertain to privacy of a medical nature, are found to be privacy violations (as they most likely will be), the consequences for the Dental Board might be considerable, whether liability ensues for the state or the individual members of the Dental Board.

Conclusion: I support the Oregon Dentists in this reasonable request for the amendments in statute which this bill would provide. I endorse passage of HB 2683 into law.

Thank you for considering my testimony. I believe this bill will serve to restore due respect for licensed professionals who have devoted immense effort toward their profession and at the same time not deter in any way from the Board’s duty to protect and inform the public.

With respect for your profession as a legislator, I remain,



Kernan Manion, MD