



**Testimony Before the  
Senate Committee on Judiciary regarding Opposition to SB 409  
Presented by Dr. James K. Lace  
on behalf of the Oregon Medical Association  
April 7, 2015**

Thank you for allowing me to testify today. My name is Dr. James Lace and I am the chair of the Legislative Committee of the Oregon Medical Association and a member of the Oregon Pediatric Society. I have been a practicing pediatrician in Salem for 38 years.

SB 409 eliminates the reasonable and constitutional \$500,000 limit on non-economic damages recoverable in civil injury lawsuits. Caps on economic and non-economic damages are used to control costs and provide a stable insurance environment under which health care practitioners effectively practice.

OMA members understand firsthand what the loss of a loved one means to the family of their patient and believe that the remedy of both economic and non-economic damages should be available to the families in a wrongful death case. We continue to support a cap on non-economic damages as the cap had been upheld in both the courts and in practice, to meet the needs of the family while providing the necessary predictability to maintain stable insurance environments for providers. Nothing in this bill removes the family's ability to recover proven economic damages, which are unlimited as well as reasonably limited non-economic damages.

Given our current medical liability environment, the OMA oppose the elimination of this cap as its removal would drive up the cost of health care and decrease access to care. Removal of the non-economic cap would allow for unlimited awards for subjective losses and cause the cost of liability insurance to rise to meet the increased risk. The cap, as it exists today under Oregon law, provides needed stability in the existing medical liability system and ensures the cost of liability insurance for our health care professionals does not skyrocket.

SB 409, if passed, will jeopardize our already strained health care system in rural Oregon through increased costs to the Rural Medical Liability Reimbursement Program. This is the program that ensures Oregonians have access to the broadest possible range of specialty physicians and providers throughout the state. Without limiting non-economic damages, the cost to physicians and providers to maintain their liability insurance would increase and for some providers, especially in rural Oregon, would lead to limited practices or the inability to maintain the practice altogether.

Further, the OMA would encourage the committee to consider the potential impact of the Early Discussion and Resolution (EDR) program on the medical liability system as a whole. Launched

in July 2104, the program's goal is to allow the patient (or the patient's representative) and their healthcare facility or provider to come to a shared understanding about what led to a serious injury or death and what should happen next. The program does not remove the ability of the patient/family member to recover damages; however, addressing the family's desire to know what happened in a transparent way may decrease the likelihood of a lawsuit that would include both economic and non-economic damages. Program data is not yet available (less than a year into implementation) and until data is available that reflects the programs impact, now is not time to make any sweeping changes.

It is important to note that a non-economic damages cap in civil lawsuits is different than Oregon's Tort Claims Act. This Act uniquely combines economic and non-economic damage limits in lawsuits that are brought against state or local governments. SB 409 removes the cap on non-economic damages in private, civil injury lawsuits brought against individual providers or health care systems and is therefore not subject to the Oregon Tort Claims Act.

For the reasons above, the OMA respectfully opposes SB 409.

I would like to thank you once again for the opportunity to address the committee regarding this very important topic and I'm happy to answer any questions.

**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](http://www.theOMA.org).**