

House Bill 3275

Sponsored by Representative WILSON

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 plaintiff may not recover more than \$250,000 in punitive damages in civil action against health practitioner for acts or omissions that are within scope of license, registration or certificate held by health practitioner. Provides that health care facility may not be held vicariously liable for punitive damages in amount greater than \$250,000 by reason of act or omission of health practitioner.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to punitive damages; creating new provisions; amending ORS 31.740 and 743.056; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 31.740 is amended to read:

6 31.740. [*Punitive damages may not be awarded against a health practitioner if:*]

7 [*(1) The health practitioner is licensed, registered or certified as:*]

8 [*(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;*]

9 [*(b) An occupational therapist under ORS 675.230 to 675.300;*]

10 [*(c) A regulated social worker under ORS 675.510 to 675.600;*]

11 [*(d) A physician under ORS 677.100 to 677.228 or 677.805 to 677.840;*]

12 [*(e) An emergency medical services provider under ORS chapter 682;*]

13 [*(f) A nurse under ORS 678.040 to 678.101;*]

14 [*(g) A nurse practitioner under ORS 678.375 to 678.390;*]

15 [*(h) A dentist under ORS 679.060 to 679.180;*]

16 [*(i) A dental hygienist under ORS 680.040 to 680.100;*]

17 [*(j) A denturist under ORS 680.515 to 680.535;*]

18 [*(k) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;*]

19 [*(L) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;*]

20 [*(m) A chiropractor under ORS 684.040 to 684.105;*]

21 [*(n) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;*]

22 [*(o) A massage therapist under ORS 687.011 to 687.250;*]

23 [*(p) A physical therapist under ORS 688.040 to 688.145;*]

24 [*(q) A medical imaging licensee under ORS 688.445 to 688.525;*]

25 [*(r) A pharmacist under ORS 689.151 and 689.225 to 689.285;*]

26 [*(s) A physician assistant as provided by ORS 677.505 to 677.525; or*]

27 [*(t) A professional counselor or marriage and family therapist under ORS 675.715 to 675.835;*

28 *and]*

29 [*(2) The health practitioner was engaged in conduct regulated by the license, registration or cer-*

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 *tificate issued by the appropriate governing body and was acting within the scope of practice for which*
2 *the license, registration or certificate was issued and without malice.]*

3 (1) **Except as provided in subsection (3) of this section, a plaintiff may not recover more**
4 **than \$250,000 in punitive damages in any civil action against a health practitioner for acts**
5 **or omissions that are within the scope of the license, registration or certificate held by the**
6 **health practitioner.**

7 (2) **A health care facility, as defined in ORS 442.015, may not be held vicariously liable for**
8 **punitive damages in an amount greater than \$250,000 by reason of any act or omission of a**
9 **health practitioner that is subject to this section.**

10 (3) **This section does not apply to any intentional tort committed by a health practitioner.**

11 (4) **As used in this section, “health practitioner” means a person licensed, registered or**
12 **certified as:**

13 (a) **A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;**

14 (b) **An occupational therapist under ORS 675.230 to 675.300;**

15 (c) **A regulated social worker under ORS 675.510 to 675.600;**

16 (d) **A physician under ORS 677.100 to 677.228 or 677.805 to 677.840;**

17 (e) **An emergency medical services provider under ORS chapter 682;**

18 (f) **A nurse under ORS 678.040 to 678.101;**

19 (g) **A nurse practitioner under ORS 678.375 to 678.390;**

20 (h) **A dentist under ORS 679.060 to 679.180;**

21 (i) **A dental hygienist under ORS 680.040 to 680.100;**

22 (j) **A denturist under ORS 680.515 to 680.535;**

23 (k) **An audiologist or speech-language pathologist under ORS 681.250 to 681.350;**

24 (L) **An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;**

25 (m) **A chiropractor under ORS 684.040 to 684.105;**

26 (n) **A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;**

27 (o) **A massage therapist under ORS 687.011 to 687.250;**

28 (p) **A physical therapist under ORS 688.040 to 688.145;**

29 (q) **A medical imaging licensee under ORS 688.405 to 688.605;**

30 (r) **A pharmacist under ORS 689.151 and 689.225 to 689.285;**

31 (s) **A physician assistant as provided by ORS 677.505 to 677.525; or**

32 (t) **A professional counselor or marriage and family therapist under ORS 675.715 to**
33 **675.835.**

34 **SECTION 2. The amendments to ORS 31.740 by section 1 of this 2015 Act apply only to**
35 **causes of action arising on or after the effective date of this 2015 Act.**

36 **SECTION 3. ORS 743.056 is amended to read:**

37 743.056. (1) As used in this section:

38 (a) “Adverse event” means a negative consequence of patient care that is unanticipated, is
39 usually preventable and results in or presents a significant risk of patient injury.

40 (b) “Claim” means a written demand for restitution for an injury alleged to have been caused
41 by the medical negligence of a health practitioner or licensed health care facility.

42 (c) “Health practitioner” means a person described in ORS 31.740 [(1)].

43 (d) “Patient’s family” includes:

44 (A) A parent, sibling or child by marriage, blood, adoption or domestic partnership.

45 (B) A foster parent or foster child.

1 (2) An insurer may not decline or refuse to defend or indemnify a health practitioner or a health
2 care facility with respect to a claim, for any reason that is based on:

3 (a) The disclosure to the patient or the patient’s family by the health practitioner or facility of
4 an adverse event or information relating to the cause of an adverse event;

5 (b) A notice of adverse health care incident filed under section 2, chapter 5, Oregon Laws 2013;
6 or

7 (c) Participation in a discussion or mediation under section 3 or 5, chapter 5, Oregon Laws 2013.

8 (3) A policy or contract of insurance or indemnity may not include a provision or term excluding
9 or limiting coverage based on:

10 (a) The disclosure to a patient or the patient’s family by a health practitioner or facility of an
11 adverse event or information relating to the cause of an adverse event;

12 (b) A notice of adverse health care incident filed under section 2, chapter 5, Oregon Laws 2013;
13 or

14 (c) Participation in a discussion or mediation under section 3 or 5, chapter 5, Oregon Laws 2013.

15 (4) An insurer may establish requirements and policy provisions for coverage of payments of
16 compensation made under section 3, chapter 5, Oregon Laws 2013, or as a result of a mediation
17 under section 5, chapter 5, Oregon Laws 2013. Requirements and policy provisions established under
18 this subsection may not be intended to or have the effect of preventing meaningful participation in
19 discussions and mediations under sections 3 and 5, chapter 5, Oregon Laws 2013.

20 (5) An insurer may not provide or be required to provide information related to an adverse
21 health care incident as defined in section 1, chapter 5, Oregon Laws 2013, for credentialing pur-
22 poses.

23 **SECTION 4.** ORS 743.056, as amended by section 16, chapter 5, Oregon Laws 2013, is amended
24 to read:

25 743.056. (1) As used in this section:

26 (a) “Adverse event” means a negative consequence of patient care that is unanticipated, is
27 usually preventable and results in or presents a significant risk of patient injury.

28 (b) “Claim” means a written demand for restitution for an injury alleged to have been caused
29 by the medical negligence of a health practitioner or licensed health care facility.

30 (c) “Health practitioner” means a person described in ORS 31.740 [(1)].

31 (d) “Patient’s family” includes:

32 (A) A parent, sibling or child by marriage, blood, adoption or domestic partnership.

33 (B) A foster parent or foster child.

34 (2) An insurer may not decline or refuse to defend or indemnify a health practitioner or a health
35 care facility with respect to a claim, for any reason that is based on the disclosure to the patient
36 or the patient’s family by the health practitioner or facility of an adverse event or information re-
37 lating to the cause of an adverse event.

38 (3) A policy or contract of insurance or indemnity may not include a provision or term excluding
39 or limiting coverage based on the disclosure to a patient or the patient’s family by a health practi-
40 tioner or facility of an adverse event or information relating to the cause of an adverse event.

41 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
43 **on its passage.**