OREGON MEDICAL ASSOCIATION

MEMORANDUM

To: Rep. Fagan, Chair, House Committee on Consumer Protection and Government Effectiveness
Rep. Buehler, Vice-Chair, House Committee on Consumer Protection and Government Effectiveness
Members of the House Committee on Consumer Protection and Government Effectiveness

From: Bryan Boehringer, Oregon Medical Association

Date: February 2, 2016

Re: HB 4136 - Opposition to Non-economic Damages Cap Increase in Wrongful Death Cases

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Oregon has a 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 maintain medical practices.

Many physicians 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. We would not support any legislation that removed a family's ability to recover proven economic damages, which are unlimited, as well as reasonably limited non-economic damages.

The OMA opposes any increase of this cap as this would drive up the cost of health care and decrease access to care. Increasing the non-economic cap could allow for bigger awards for subjective losses and cause the cost of liability insurance to rise to meet the increased risk. This increased cost is in turn, passed on to providers in the form of increased insurance premiums, which may become unaffordable and out of reach for the provider. 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.

Increasing the cap further jeopardizes our already strained health care system in rural Oregon through increased costs to the state funded Rural Medical Liability Reimbursement Program. This program ensures Oregonians have access to the broadest possible range of specialty physicians by incentivizing rural practice. History has shown us that high medical liability insurance costs have had a detrimental impact on the availability and affordability of health care services in rural areas. Without the subsidies offered through the Rural Medical Liability Reimbursement program, specialists, most often OBs,

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pediatricians and neurologists, are forced to leave practice because the costs of insurance combined with overhead make operating a rural practice unsustainable. This means that rural Oregonians, who need this high risk, specialty care find themselves without access to this care and must then either forgo care and risk their health or seek services miles away from their home. Raising the cap could result in the unintended consequence of increased costs to the state to ensure that the rural liability reimbursement program remains viable and that rural Oregonians continue to have access to their health care providers where they live.

Tripling the non-economic cap would make Oregon an outlier among its neighboring Western states, where the majority of states have a non-economic damages cap that is either equal to or lower than Oregon's current cap. This means Oregon's liability carriers are able to offer comparable coverage rates that make Oregon competitive and assists in retaining and recruiting new providers to Oregon. Based on available data from The Doctor's Company, the difference in provider premiums with a state that has a cap (Oregon) and one that does not (Washington), can be up to $24,000 per year. As indicated previously, we know that one of the specialties most affected by any liability coverage premium increase is obstetrics and gynecology, and a premium increase in the range of $20,000 could leave rural Oregon without any OB/Gyns. If Oregon's triples the non-economic cap, we fully expect that both new graduates and existing providers will look to join their colleagues in states to our western and southern borders. This negatively impacts Oregon's patients.

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 2014, 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 can allow all the parties to come to a resolution.

This program is new and just beginning to see notices go through the full process. For the Legislature to take this action now is premature and may undermine the EDR process by deterring physicians from using the program.

For the reasons above, the OMA respectfully opposes any increase to the cap on non-economic damages.

The Oregon Medical Association serves and supports over 8,200 physicians, physician assistants and student members in their efforts to improve the health of all Oregonians. Additional information can be found at www.theOMA.org.

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Rep. Rayfield, Vice-Chair, Committee on Consumer Protection and Government Effectiveness
Rep. Buehler, Vice-Chair, House Committee on Consumer Protection and Government Effectiveness
Members of the House Committee on Consumer Protection and Government Effectiveness

From: Bryan Boehringer, OMA Government Relations
Courtni Dresser, OMA Government Relations

Date: February 4, 2016

Re: HB 4136- Physician Workforce Data Sources

The OMA would like to submit the following information to support our testimony at the February 2, 2016 public hearing on HB 4136, in which we testified to the need to ensure the committee has access to the most accurate, comprehensive data on Oregon's physician and healthcare workforce.

Two entities - Oregon's Healthcare Workforce Institute and the OHA Office for Oregon Health Policy and Research, have published reports in recent years addressing Oregon's healthcare workforce. These reports, which do use the same source for licensing data as presented in the proponent's testimony, go further by providing more in-depth analyses of the data that examines workforce-related data (i.e. employment status), practice characteristics, specialty challenges and the impact of state and Federal reform as well as liability reform on those practicing in both rural and urban areas. One of the most studied areas of the workforce continues to be rural workforce retention, recruitment and projected demand/shortages.

In Oregon, the rural physician workforce has fluctuated over the years and in recent years has largely remained viable, with a 77% retention rate (Retention of Physicians in Rural and Frontier Oregon: 2008-2012). By the numbers, in 2012, there were 2,030 physicians (MD and DO) serving rural Oregon, compared to 8,477 practicing in urban areas. In order to continue to retain, and more importantly recruit new physicians to rural areas, the importance of the Oregon Rural Medical Practitioners Subsidy Program and insurance market stability cannot be overlooked.

In the immediate years following the Lakin v. Senco, Inc. (1999) decision, Oregon's rural physician workforce decreased as liability premiums rose and instability in the malpractice market increased. According to the Oregon Health and Science University Center for Rural Health, in 2004, the Portland area had 302 physicians available for each 100,000 residents, while rural Oregon residents had only 104 physicians per 100,000 residents. OMA's own survey results (in April 2003) reported that "43% of

Oregon neurosurgeons, 27.1% of orthopedic surgeons, and 23.5% of obstetrician-gynecologists reported they have already stopped providing certain services or would do so". Two rural cities- Astoria and Roseburg- closed their only obstetrical practices (Roseburg Women's Healthcare and Dr. Katherine Merrill's practice) due to the rapidly rising costs of medical liability insurance. In Roseburg, the closure meant patients had to drive sixty to ninety minutes for obstetrical serves (Hedrick, 2007). The fallout from the Lakin decision caused the American Medical Association to classify Oregon as one of twelve states "experiencing a medical malpractice liability crisis" (Hedrick, 2007).

In 2003, HB 3630 was passed and summarized by the Oregon Legislative Office of Committee Services as follows:

> "With medical liability insurance costs continuing to rise and Oregon's rural health care providers leaving their practices (primarily obstetrics, pediatrics and neurology specialists), HB 3630 directs the State Accident Insurance Fund Corporation (SAIF) to develop and implement a short-term program of reinsurance for medical professional liability insurance for qualified rural medical and osteopathic doctors."

The Oregon Rural Medical Practitioners Subsidy Program took effect in 2004 and has ensured that physicians working in rural clinics and private practice settings maintained these practices and continued to provide care where rural Oregonians access their care. The subsidy incentivizes rural practice and the effect it has had on rural physician retention in rural Oregon is evident. Without this program, the numbers wouldn't be where they are today. The program has been reauthorized multiple times to maintain a stable liability market in rural Oregon and limit the same detrimental effects that occurred from 1999 to 2004.

Physicians currently practicing in rural Oregon continue to struggle with recruitment and retention of new physicians, even with the incentive provided by the rural subsidy. Oregon's 2010 Rural Physician Workforce: A Report of Key Findings found that Oregon's rural physician workforce was "older, largely self-employed, and worked primarily in clinics and private practice settings". As Oregon's rural workforce retires and/or reduces patient care hours, there is concern that there may not be sufficient numbers of emerging physicians to replace them, especially when these young physicians tend to favor employment with clinics or hospitals, in more urbanized areas. Coupled with the increased demand for health services brought by state and federal health reform, it has been estimated that in some counties (Curry, Wheeler, Coos, Tillamook, Wallowa and Josephine), demand for full-time physicians, physicians assistants and nurse practitioners will increase by 25% (The Projected Demand for Physicians, Nurse Practitioners, and Physician Assistants in Oregon: 2013-2020).

Raising the non-economic damages cap in wrongful death suits will disrupt the stability of the medical malpractice insurance market, with the largest detriment to rural physicians. As indicated above, stability in the liability market is critical to recruitment and retention of physicians, in both rural and urban areas of the state. It has been estimated that every $100,000 increase in a cap raised premiums by 3.9 percent (Kilgore, Morrisey and Nelson, 2006) – this could send our medical liability system into a tailspin that could have similar results to 2003 and earlier.

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Resources:

Oregon Office of Rural Health, Oregon Rural Medical Practitioner's Subsidy Program.
http://www.ohsu.edu/xd/outreach/oregon-rural-health/providers/rural-insurance-subsidy.cfm

Oregon Health Care Workforce Institute. http://www.oregonhwi.org/

OHA, Oregon Health Policy and Research. http://www.oregon.gov/oha/OHPR/pages/index.aspx

Referenced reports:

1. Retention of Physicians in Rural and Frontier Oregon: 2008-2012.
http://oregonhwi.org/resources/documents/RetentionofOregonRuralPhysicianWorkforce2008-2012Final2014.pdf

2. Oregon's 2010 Rural Physician Workforce: A Report of Key Findings.
http://www.oregonhwi.org/resources/documents/OR2010RuralPhysicianWorkforceOHWI82011authorRChamberlain_000.pdf

3. The Projected Demand for Physicians, Nurse Practitioners, and Physician Assistants in Oregon: 2013-2020.
http://www.oregonhwi.org/resources/documents/ProjectionsReportCORRECTEDFINALfor2-4-14.pdf

4. Kilgore, ML, Morrisey MA, Nelson LJ. Tort Law and Medical Malpractice Insurance Premiums. *Inquiry*. 2006;43:255-270.

5. Hedrick, V. The Medical Malpractice Crisis: Bandaging Oregon's Wounded and Protecting Physicians. Willamette Law Review. 2007. Accessed Feb. 4, 2016
https://willamette.edu/law/resources/journals/review/pdf/WLR%2043-3_Hedrick_MEproof_HT_5_8_07.pdf