

D R A F T

SUMMARY

Provides exception to physician-patient privilege for examination at deposition about communications with patient's physicians about issue of patient's physical, mental or emotional condition in proceeding in which party relies on condition as element of claim.

A BILL FOR AN ACT

1
2 Relating to physician-patient privilege; creating new provisions; and amend-
3 ing ORS 40.235.

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

5 **SECTION 1.** ORS 40.235 is amended to read:

6 40.235. (1) As used in this section, unless the context requires otherwise:

7 (a) "Confidential communication" means a communication not intended
8 to be disclosed to third persons except:

9 (A) Persons present to further the interest of the patient in the consul-
10 tation, examination or interview;

11 (B) Persons reasonably necessary for the transmission of the communi-
12 cation; or

13 (C) Persons who are participating in the diagnosis and treatment under
14 the direction of the physician, including members of the patient's family.

15 (b) "Patient" means a person who consults or is examined or interviewed
16 by a physician.

17 (c)(A) "Physician" means a person authorized and licensed or certified to
18 practice medicine, podiatry or dentistry in any state or nation, or reasonably
19 believed by the patient so to be, while engaged in the diagnosis or treatment
20 of a physical condition.

1 (B) "Physician" includes licensed or certified naturopathic and
2 chiropractic physicians and dentists.

3 (2) A patient has a privilege to refuse to disclose and to prevent any other
4 person from disclosing confidential communications in a civil action, suit or
5 proceeding, made for the purposes of diagnosis or treatment of the patient's
6 physical condition, among the patient, the patient's physician or persons who
7 are participating in the diagnosis or treatment under the direction of the
8 physician, including members of the patient's family.

9 (3) The privilege created by this section may be claimed by:

10 (a) The patient;

11 (b) A guardian or conservator of the patient;

12 (c) The personal representative of a deceased patient; or

13 (d) The person who was the physician, but only on behalf of the patient.

14 Such person's authority so to do is presumed in the absence of evidence to
15 the contrary.

16 (4) The following is a nonexclusive list of limits on the privilege granted
17 by this section:

18 (a) If the judge orders an examination of the physical condition of the
19 patient, communications made in the course thereof are not privileged under
20 this section with respect to the particular purpose for which the examination
21 is ordered unless the judge orders otherwise.

22 (b) Except as provided in ORCP 44, there is no privilege under this sec-
23 tion for communications made in the course of a physical examination per-
24 formed under ORCP 44.

25 (c) There is no privilege under this section with regard to any confiden-
26 tial communication or record of such confidential communication that would
27 otherwise be privileged under this section when the use of the communi-
28 cation or record is specifically allowed under ORS 426.070, 426.074, 426.075,
29 426.095, 426.120 or 426.307. This paragraph only applies to the use of the
30 communication or record to the extent and for the purposes set forth in the
31 described statute sections.

1 **(d)(A) A patient is subject to examination at deposition as to com-**
2 **munications with the patient’s physician about the patient’s mental,**
3 **physical or emotional condition in any proceeding in which the patient**
4 **relies upon the condition as an element of the patient’s claim or de-**
5 **fense.**

6 **(B) After the patient’s death, a person who participated in the di-**
7 **agnosis or treatment of the patient under the direction of the physi-**
8 **cian, including members of the patient’s family, is subject to**
9 **examination at deposition as to communications with the patient’s**
10 **physician about the patient’s mental, physical or emotional condition**
11 **in any proceeding in which any party relies upon the condition as an**
12 **element of the party’s claim or defense.**

13 **SECTION 2.** **The amendments to ORS 40.235 by section 1 of this 2019**
14 **Act apply to communications occurring on or after the effective date**
15 **of this 2019 Act.**

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