



**Testimony Before the
Senate Committee on Judiciary regarding Opposition to SB 487
Presented by Dr. Kevin Reavis
on behalf of the Oregon Medical Association
February 28, 2017**

Thank you for the opportunity to testify today. My name is Dr. Kevin Reavis and I am the incoming President of the Oregon Medical Association. I am a practicing esophageal, foregut and bariatric surgeon at the Oregon Clinic and a clinical associate professor at OHSU.

While the OMA opposes SB 487, we believe it is critical for the legislature to understand what led to this bill and what the consequences of the bill could be.

What led to this bill

In May 2016, in the case of *Horton v. OHSU*, the Oregon Supreme Court set forth a new legal roadmap for the Oregon Legislature to follow when establishing constitutional and reasonable safeguards around damage awards in our court system. SB 487 seeks to disregard and change that roadmap. The bill would eliminate an existing legislative cap on non-economic damages in injury cases and double that cap in wrongful death cases. We believe that SB 487 will disrupt a stable medical malpractice insurance environment and fails to consider the Legislature's unique role as stewards of our state's health care system.

Doubling the wrongful death cap will increase medical liability costs

SB 487 seeks to double the cap on non-economic damages in wrongful death cases to \$1,000,000.

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. Oregon does not cap economic damages and has maintained a cap on non-economic damages in wrongful death cases to ensure the viability of medical liability insurance costs and provide a stable environment under which health care providers can be insured and maintain and employ professionals and staff in their medical practices.

Doubling this cap would increase the monetary awards for unpredictable, subjective, non-monetary losses, which, in turn, increases the cost of liability insurance. This is passed on to providers in the form of higher liability premiums. Any increase in premiums is likely to impact the whole medical practice, especially if a physician is forced to make cuts (in personnel, patient care hours, or services offered) to accommodate higher premiums.

This consequence is further exacerbated by the bill's included provision that it would apply to actions that occur before, on, or after the effective date of the bill. This would subject physicians with existing insurance policies to the unknown effect of having a policy that may not cover the doubling of the cap for non-economic damages.

Elimination of a non-economic damage cap in injury cases will lead to increased health care costs

SB 487 seeks to create unlimited liability for physicians for non-economic damages in medical injury cases.

Economic and non-economic damages in injury or wrongful death case are different and the difference is critical. In general, patients injured due to negligence in our health care system may recover unlimited economic damages. All we are focused on today is a reasonable cap on non-economic damages.

The Oregon Supreme Court has spoken clearly and thoughtfully about giving the Oregon Legislature the tools it needs to ensure that our health care liability system is predictable and financially sound. Maintaining a reasonable cap on non-economic damages, while allowing for unlimited economic damages, ensures that health care spending is appropriated to patients and not expended on unpredictable jury decisions or in the form of significantly higher liability premiums. Non-economic damages are highly subjective and prone to multi-million dollar verdicts because juries rightfully sympathize with a particular plaintiff. We believe that the Legislature should consider the financial challenges to our entire health care system and use the tools it has been given to safeguard the system from runaway costs.

Both doubling a cap and eliminating a cap will hurt health care access

SB 487 is a blunt response to the Oregon Supreme Court's good guidance and will put Oregon at a disadvantage to other states for its ability to recruit and retain medical professionals.

When considering moving to our state, health care providers will seek out states that practice less defensive medicine and have lower insurance premium costs. Oregon already faces a disproportionate shortage of physicians and health care professionals, especially in the more rural parts of our state.

Thankfully, the Legislature created the Rural Medical Liability Reimbursement Program, which ensures Oregonians have access to the broadest possible range of specialty physicians by incentivizing rural practice. SB 487 would jeopardize this Program through increased costs.

History has shown us that 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 obstetricians, pediatricians and neurologists, are forced to leave rural practice because the costs of insurance combined with overhead eclipse their potential incomes. This means that rural

Oregonians, who need this high risk, specialty care find themselves without access to critical care and must either forgo care and risk their health or seek services miles away from their home.

Doubling or eliminating the cap could result in the consequence of increased costs to the state to ensure that this Program remains viable and that rural Oregonians continue to have access to health care providers where they live.

For the reasons above, the OMA respectfully opposes the doubling or elimination of the cap on non-economic damages. Thank you for the opportunity to address the committee.

The Oregon Medical Association is an organization of over 8,100 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.