



February 28, 2017

TO: Senator Floyd Prozanski, Chair  
Senate Committee on Judiciary  
FR: Bob Joondeph, Executive Director  
RE: SB 487

Disability Rights Oregon (DRO) is Oregon's nonprofit *Protection and Advocacy* office that provides legal-based advocacy to Oregonians with disabilities. DRO does not engage in tort litigation and rarely seeks monetary compensation for our clients. All of our clients have a disability that may have arisen at birth or through the effects of physical or emotional trauma, physical injury or illness.

Whenever and however a disability arises, it may have a profound effect upon a person's perception of and expectation for their life. It may disrupt their family, intimate relationships, friendships and community. There may be significant financial challenges, difficulties in finding housing, transportation and need assistance with activities of daily living. Heightened depression and anxiety are not uncommon. Pain management may be limited, causing irritability and anger. Marriages may fall apart due to the added strain of the additional challenges of having a disabled child, spouse or parent.

In my 30 years working at DRO, I have seen this pattern of stress and disruption have a devastating effect and, all too often, cause the break-up of families. Frankly, some survivors feel that this is not what they signed up for when they got married or had a family.

People with disabilities can and do achieve full and satisfying lives. Even so, the statistics are daunting. The unemployment rate for those with disabilities who are ready, willing and able to work is persistently twice that of other workers. Studies show a pay disparity of 37% between workers with and without disabilities. Loss of economic freedom may be emotionally devastating to a formerly self-reliant individual.

DRO urges passage of SB 487 which recognizes and seeks to address these realities.



## Brain Injury Alliance of Oregon

Chair Prozanski and members of the Judiciary Committee,

My name is Sherry Stock and I have been the Executive Director of the Brain Injury Alliance of Oregon (BIAOR) for 16 years. We are a non-profit association with a mission to create a better future through brain injury prevention, advocacy, education, research and support. Our leadership represents a cross section of stakeholders in the field of brain injury including survivors, family members, clinical practitioners, researchers and service providers.

I come to you today in strong support of Senate Bill 487. This legislation will go a long way to help people who have undergone life-changing, traumatic brain injuries due to negligence of another. At the Brain Injury Alliance, we see, firsthand, the devastation a brain injury causes on the individual and his/her family. Let me share a few examples. An attorney who was a passenger in a rollover auto accident, and due to the injuries sustained she, will never be able to go back to work again. A high school senior returned to play in a football game even though he had a severe headache and had difficulty walking, was knocked out again, spent seven months in a coma, and now at 30 years old has the comprehension of a 2<sup>nd</sup> grader. A 30 year old man, rear ended at a stop light, ended up in a two week coma and will never live independently again. A man, while on a construction job, fell twenty feet and will be in assisted living the rest of his life.

It is estimated that 5.3 million American children and adults currently live with disabilities resulting from traumatic brain injuries. A vast majority of these injuries are not sustained due to the negligence of another. But for those Oregonians suffering from traumatic brain injury because of someone else's negligence, they should be guaranteed their most basic, fundamental constitutional right to hold the wrongdoer accountable in a civil court of law in front of a jury of their peers.

It's important to remember the physical, behavioral and cognitive changes that can be caused by a traumatic brain injury. Oftentimes they can result in memory loss, speech impairment, difficulty with judgement and even paralysis. Sometimes a seemingly mild brain injury will result in personality and behavior changes, which can drive away family and friends. Studies have shown over 80% of the homeless and those in prison have had brain injuries. For some survivors and their families, their lives will never be the same. It can be hard to put into perspective the life changes caused by a traumatic brain injury and the financial, physical and psychological toll it takes on everyone involved. This is why it is so critical these cases be judged on the facts of each case on a case-by-case basis.

On behalf of traumatic brain injury survivors and their families, I ask for your support of Senate Bill 487.

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BIAOR is a 501(c)(3)

Tax-exempt organization

Tax ID: 93-0900797



**Testimony in support of SB 487  
Senate Committee on Judiciary  
Submitted by Klarissa Oh, Education Director  
February 28, 2017**

Chair Prozanski, Vice-Chair Thatcher, and members of the Committee:

I am Klarissa Oh, Education Director and one of the founders of Oregon Abuse Advocates and Survivors in Service (OAASIS). We are building a movement that empowers communities to prevent child sexual abuse and help survivors live full, healthy, joyful lives. We are working towards a future where all people experience a loving childhood free of abuse and trauma, and all people who have been sexually abused are supported to heal.

I am here as a strong supporter of Senate Bill 487. This bill will ensure that people who were sexually abused as children can finally hold the people who abused them accountable, as well as the institutions/organizations that knowingly allowed offenders to be around our vulnerable children. These institutions should be held accountable for their negligence—for looking the other way. SB 487 will restore the power of juries to hear the facts of the case and determine case-by-case justice instead of applying a one-size-fits-all limit on what a jury can determine is fair and just.

Child sexual abuse deeply impacts a person, creating ripple effects that can flow throughout a lifetime. The emotional and psychological pain of child sexual abuse don't appear on x-rays like a broken bone, but the impact can be just as fracturing to a survivor's long-term health. Victims of child sexual abuse are far more likely to attempt suicide or turn to alcohol or illegal drugs to self-medicate. These are just a few of the unseen challenges survivors of child sexual abuse must overcome each and every day to live full, healthy, joyful lives. Survivors can heal—but the healing process extends over a lifetime.

Most children are sexually abused by someone they know and trust. This could be at the hands of a family member, loved one or someone else the child looks to for guidance. For Jon Anderson, it was his trusted Boy Scout troop leader. Jon's abuser had been a known problem in the San Francisco area, but instead of holding him accountable, the Boy Scouts transferred to Portland, where he abused 11 boys in the mid-1970's. Like far too many institutions trusted to protect and nurture our children, the Scouts turned a blind eye, swept the problem under the rug, and through their silence and inaction, continued supporting people who sexually abused children, allowing them to sexually abuse children again.

Jon's case helped to uncover hundreds of internal documents showing the Scouts knew of the abuse and yet allowed known abusers to continue to work, unsupervised, with children. Through Jon's civil

case, and others like his, the real facts and flaws in the reporting system were uncovered and forced institutional change to put the focus where it should have always been—on keeping our children safe.

Child sexual abuse thrives in the shadows of secrecy. As we saw in Jon's case, often times the only way to get powerful, trusted institutions and corporations to change their ways is to hold them accountable through the civil justice system.

I ask you to stand with me and countless victims of child sexual abuse to ensure they receive justice on a case-by-case basis. There should never be an arbitrary, one-size-fits-all value placed on their quality of life. Survivors deserve their day in court. Please join me in supporting Senate Bill 487.



February 28, 2017

James T. Dorigan, Jr., CPCU, ARM, ARe, RPLU  
Senior Vice President, Regional Operating Officer  
The Doctors Company  
Regional Headquarters - Lake Oswego, Oregon

To: Chairman Prozanski and Members of the Oregon State Senate Judiciary Committee

RE: SB 487 - Oppose  
Increases \$500,000 Cap on Noneconomic Damages in Wrongful Death Cases to \$1,000,000 (indexed) and Eliminates \$500,000 Cap on Noneconomic Damages in Bodily Injury Cases

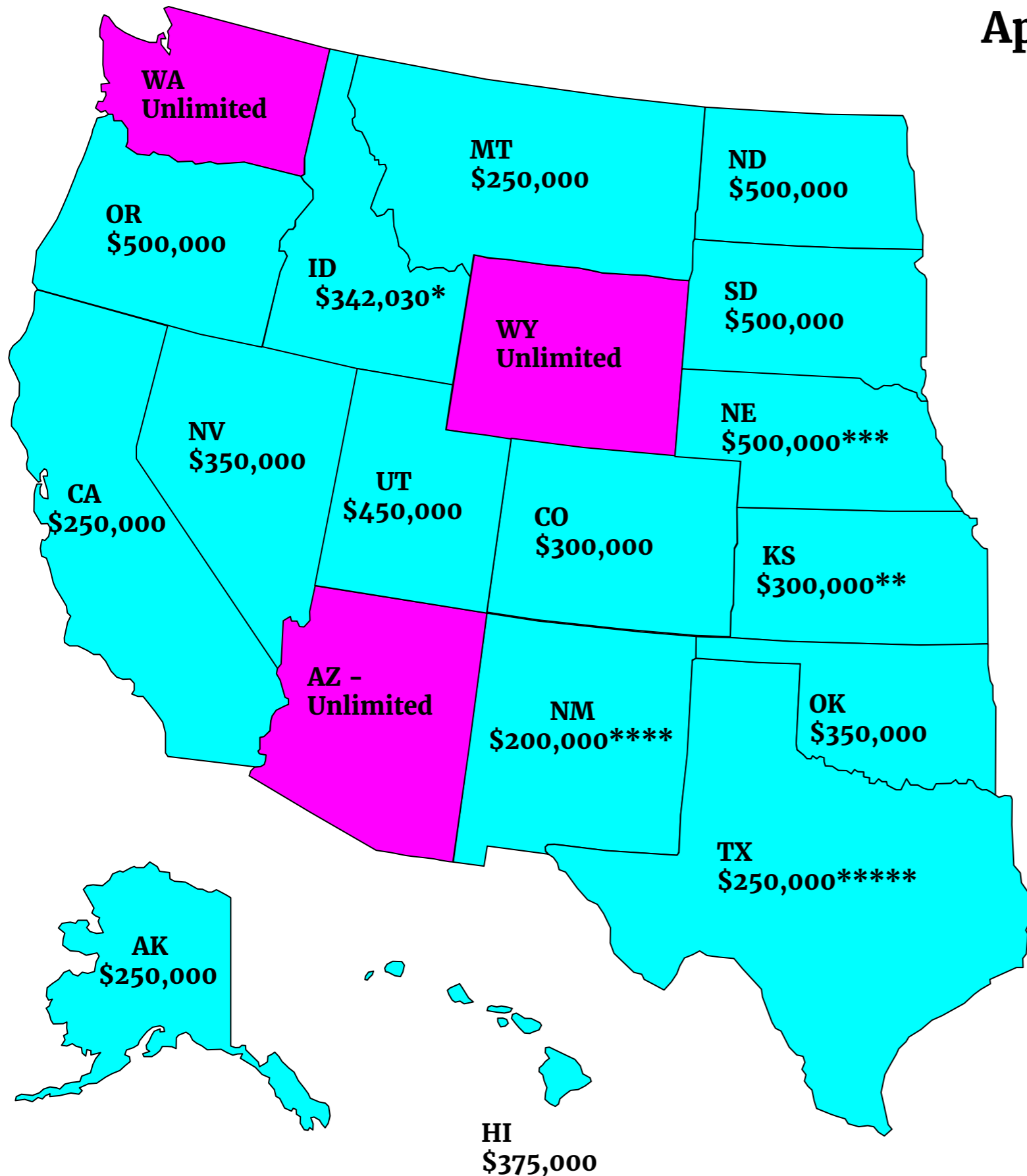
My name is Jim Dorigan. I am the Regional Operating Officer for The Doctors Company (TDC), a physician owned company which insures over 2600 Oregon health care providers. I have been engaged in insuring Oregon healthcare providers since 1983. Over the last seven years in Oregon, medical professional liability premiums have decreased and are currently at or below the premiums paid by physicians in 2002. Frequency, or the number of claims made against Oregon physicians, has decreased by over 20%. While frequency has decreased, severity or the average amount paid to resolve claims, has risen annually from 4% to 6%. There are many theories as to why claims frequency has dropped but a contributing factor is the focus of physicians and insurers on patient safety. Professional liability insurers, physicians and hospitals have invested heavily in patient safety efforts over the last decade. Severity has increased due to the increase in the components of economic damages and increasing non-economic damage awards.

The bill being proposed doubles the cap on non-economic damages for wrongful death and eliminates the non-economic damages cap for bodily injury cases in Oregon. **The Doctors Company and a large coalition of healthcare providers, insurers, businesses and hospitals oppose a change in the current law.** The reasons for our opposition are as follows:

- Under current law, all economic damages including medical expenses, future earnings and the cost of replacing services are recoverable without limitation. The current \$500,000 non-economic damage cap provides a reasonable and fair amount for pain and suffering and emotional loss. Oregon is well in line with the large majority of the western US in having a cap of \$500,000 or less. (Exhibit A, Exhibit B)
- The stable market in Oregon for professional liability insurance could be damaged. Rates have decreased and many insurers are now writing coverage in Oregon. In 2000, when the non-economic damage cap for cases other than wrongful death was eliminated, there was a 30% increase in claims filed and claim payments and costs increased substantially. This caused a rapid increase in premiums and the withdrawal of several insurers and the loss of high risk specialty physicians.
- Oregon doctors pay more for medical professional liability insurance than California doctors who retained their liability reforms. On the west coast, rates for Oregon doctors are substantially less than Washington, a state with no damages caps and Oregon rates are substantially more than the rates in California, a state with a \$250,000 damage cap on all noneconomic damages. (Exhibit C)

- Medical professional liability rates in Oregon are not affordable for rural health practitioners and have resulted in Oregon subsidizing the premiums in rural areas. This has allowed rural areas to recruit or maintain key medical services.
- The majority of cases against healthcare provider are driven by bad outcomes, not bad medical care. Over 80% of claims against physicians are closed without payment other than the expenses of defending the claims. These are cases where there was an adverse or unexpected outcome but independent medical reviewers indicated that there was no negligence. Oregon juries have found no negligence in over 80% of cases against TDC's members that have gone to trial in the last two years.
- Eliminating the \$500,000 cap on non-economic damages will create costlier litigation. Additional cases will be filed and settlements will be more difficult to obtain with the potential for unlimited damages. TDC's experience in Florida with the elimination of the wrongful death cap on noneconomic damages shows that wrongful death cases as percentage of all cases, increased by 23% after the cap was struck down by the Florida courts. The frequency of claims in Florida has risen and Florida now statistically stands out as a state with increasing frequency. The results are increased litigation costs, increasing insurance premiums for Florida doctors and increased pressure on the healthcare system.
- Oregon has created a vehicle for resolving medical professional liability claims without litigation. SB 483, Early Discussion and Resolution, has been in effect for over two years. We need to give this legislation a chance to work without creating additional incentives for litigation.
- The healthcare system is under great financial pressure, and even more so with the ACA in peril. Malpractice insurance has been a stable cost component of healthcare. Preserving stability in Oregon is critical to access, physician recruitment and affordable healthcare.
- Access to healthcare is critical in rural Oregon and for underserved populations statewide. Access to specialized care in the high risk specialties is important for all of Oregon. The cost of liability insurance is increased when non-economic damage caps are removed or not available. The economic burden impacts more severely the high risk specialties such as Obstetricians and Surgeons.
- This law will be retroactive for all wrongful death and bodily injury cases where a judgment has not been entered. The Doctors Company is currently defending 89 law suits in Oregon of which 10 are wrongful death suits. The proposed legislation makes the exposure on 79 of these cases unlimited and increases the exposure on the wrongful death claims by \$500,000 each. Economic damage amounts are established by verifiable numbers which can be quantified.
- I urge you to please vote NO on Senate Bill 487 to preserve and promote access to health care for all Oregonians. Oregon's caps on non-economic damages ensures that injured patients receive fair compensation while preserving access to healthcare by reducing costs for doctors, nurses and healthcare providers and helping them serve the most vulnerable populations.

# Limits on Non-Economic Damages as Applied to Medical Professional Liability Claims as of 1/23/17



**KEY**

- Cap is greater than \$500,000
- Cap is \$500,000 or less

\* ID - The controlling Idaho Statute sets the cap on non-economic damages at \$250,000. From July 2004, this cap will increase or decrease to reflect changes in the average annual wage as computed by the ID Industrial Commission. The figure cited represents the current cap amount.

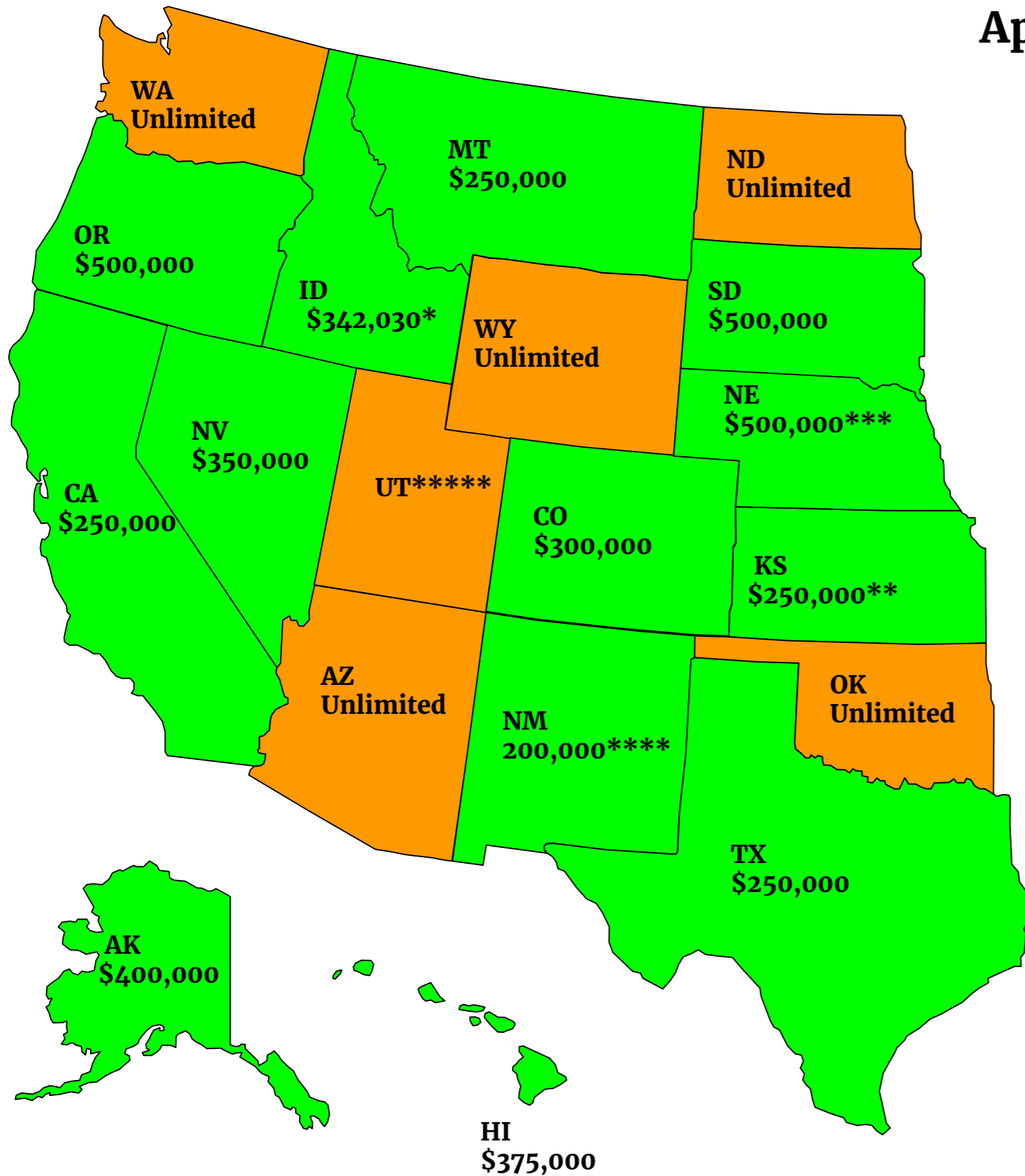
\*\* KS - The cap will increase in steps through July 1, 2022 when it will be set at \$350,000.

\*\*\* NE - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on both economic and non-economic damages of \$2,250,000.

\*\*\*\* NM - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on damages of \$600,000..

\*\*\*\*\* TX - The \$250,000 is for claims against a single provider or institution. For multiple providers/institutions, the cap is \$500,000.

# Limits on Non-Economic Damages as Applied to Medical Professional Liability Wrongful Death Claims as of 1/23/17



**KEY**

- Cap is greater than \$500,000
- Cap is \$500,000 or less

\* ID - The controlling Idaho Statute sets the cap on non-economic damages at \$250,000. From July 2004, this cap will increase or decrease to reflect changes in the average annual wage as computed by the ID Industrial Commission. The figure cited represents the current cap amount.

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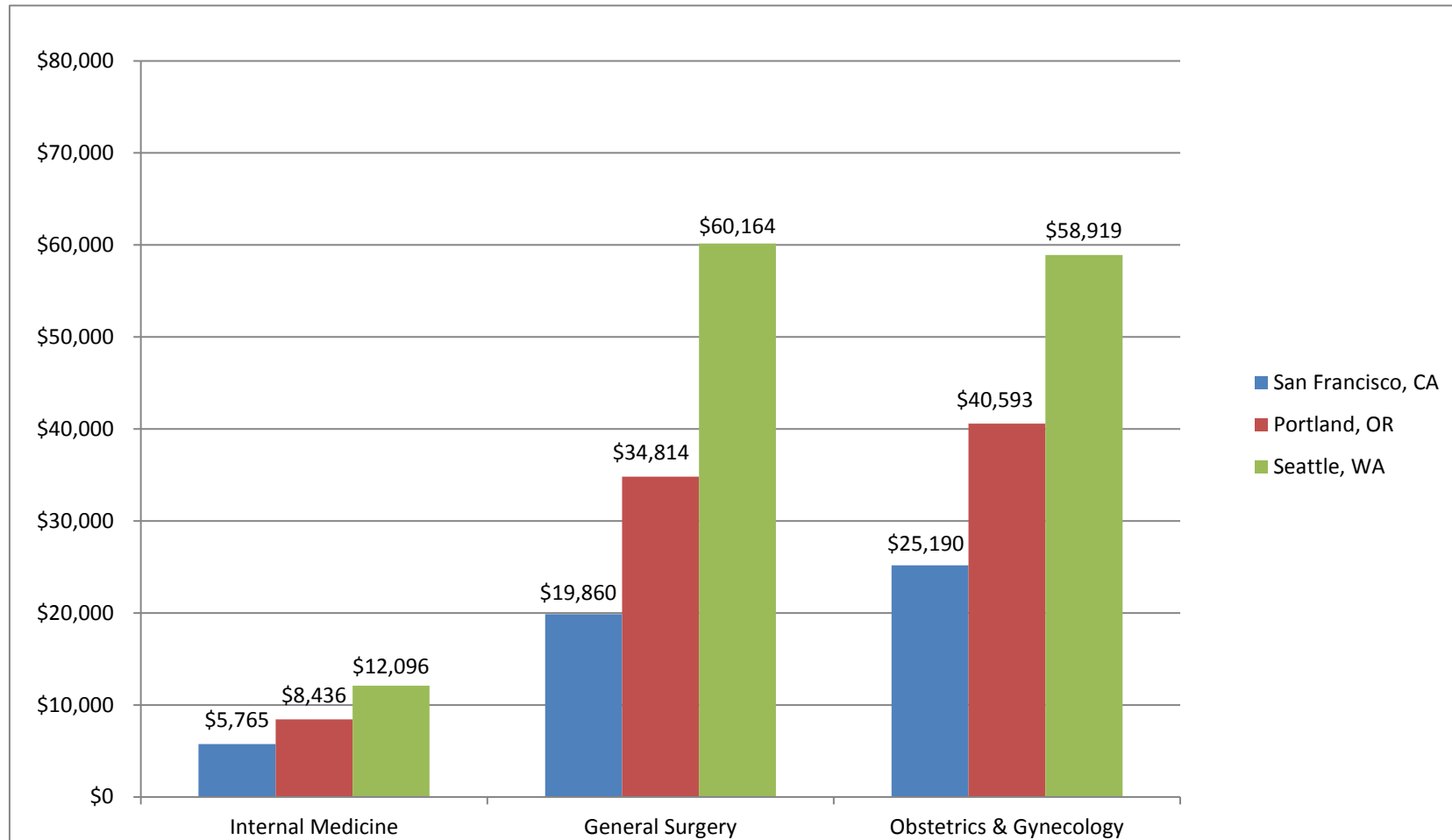
\*\*\* NE - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on both economic and non-economic damages of \$2,250,000.

\*\*\*\* NM - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on both economic and non-economic damages of \$600,000.

\*\*\*\*\* UT - The \$450,000 cap for non-economic damages in wrongful death claims was held unconstitutional by UT Supreme Court in August, 2015. A \$450,000 cap on non-economic damages remains in effect for other claims.

Practice location	Internal Medicine	General Surgery	Obstetrics & Gynecology	State's cap on non-economic damages
San Francisco, CA	\$5,765	\$19,860	\$25,190	\$250,000
Portland, OR	\$8,436	\$34,814	\$40,593	\$500,000*
Seattle, WA	\$12,096	\$60,164	\$58,919	None

Source: The Doctors Company rates published in Medical Liability Monitor 2016 Annual Rate Survey Issue



\*Oregon rates reflect only limits non-economic damages in wrongful death actions.



## **Senate Bill 487:**

# **Impact on Medical Liability and Access to Healthcare**

Presented by: Susan J. Forray, FCAS, MAAA  
Principal & Consulting Actuary  
262.796.3328

On Behalf of: Oregon Liability Reform Coalition

February 27, 2017

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# Overview of Presentation

- 1) Scope and Overall Results
- 2) Empirical Data
- 3) Access to Healthcare
- 4) Other Considerations
- 5) Appendix – Monte Carlo Simulation Model

# Topic 1: Scope and Overall Results



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## Scope of Analysis

- Effect on Prospective Medical Liability Indemnity and Claim Expense Payments
  - Average Indemnity and Expense per Claim
  - Number of claims
- Provide Empirical Data Based on Oregon and Other States
- Summarize Reports on Access to Healthcare

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## Overall Results

- 20% Increase in Average Indemnity per Wrongful Death Claim
- 15% Increase in Wrongful Death Costs Due to Additional Claims
- Overall Impact Expected to be a 38% Increase in Wrongful Death Costs\*

\*Calculated as  $(1 + 20\%) \times (1 + 15\%)$

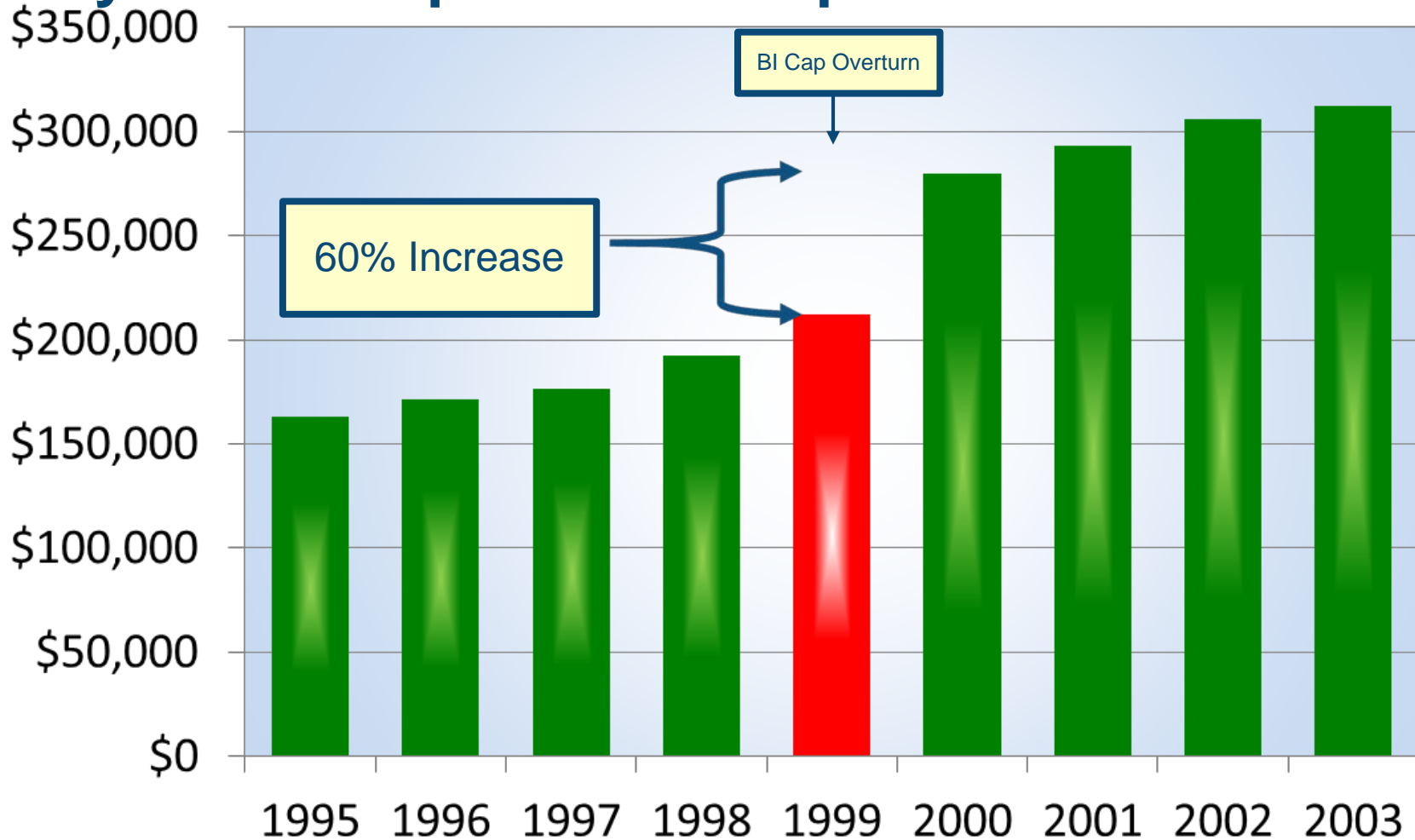
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# Data Underlying Statistical Model of Oregon Medical Liability Claims

- Based on Oregon Closed Claim Data
- Data Provided by Three Largest Providers of Medical Liability Coverage in Oregon
- 18,000+ claims over 15+ years
- 25+ fields maintained in database
- Resulting model yielded a process with 100,000 simulated occurrences of medical misadventure

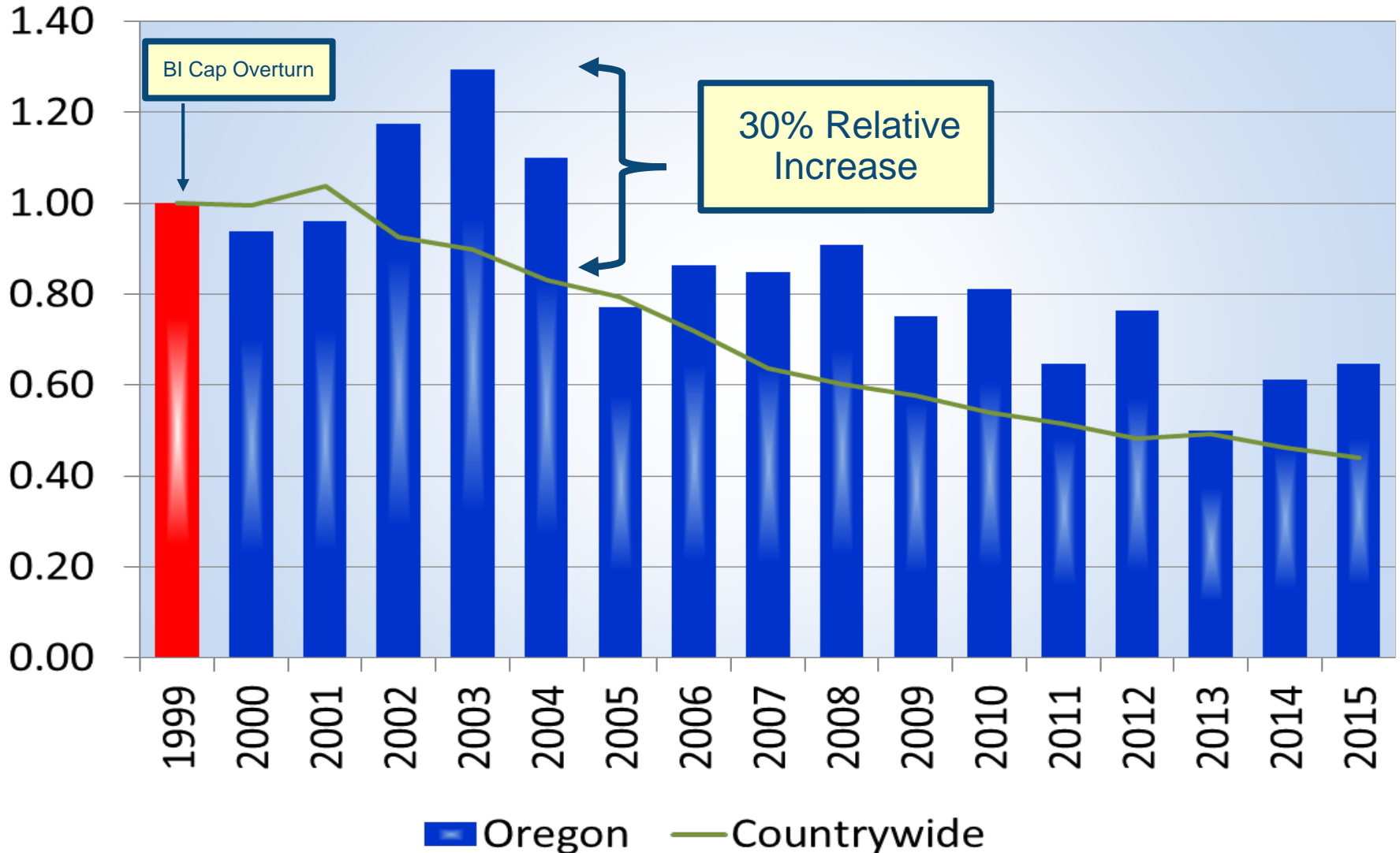
## **Topic 2: Empirical Data**

# Oregon Average Medical Liability Indemnity Payment – Impact of BI Cap Overturn in 1999



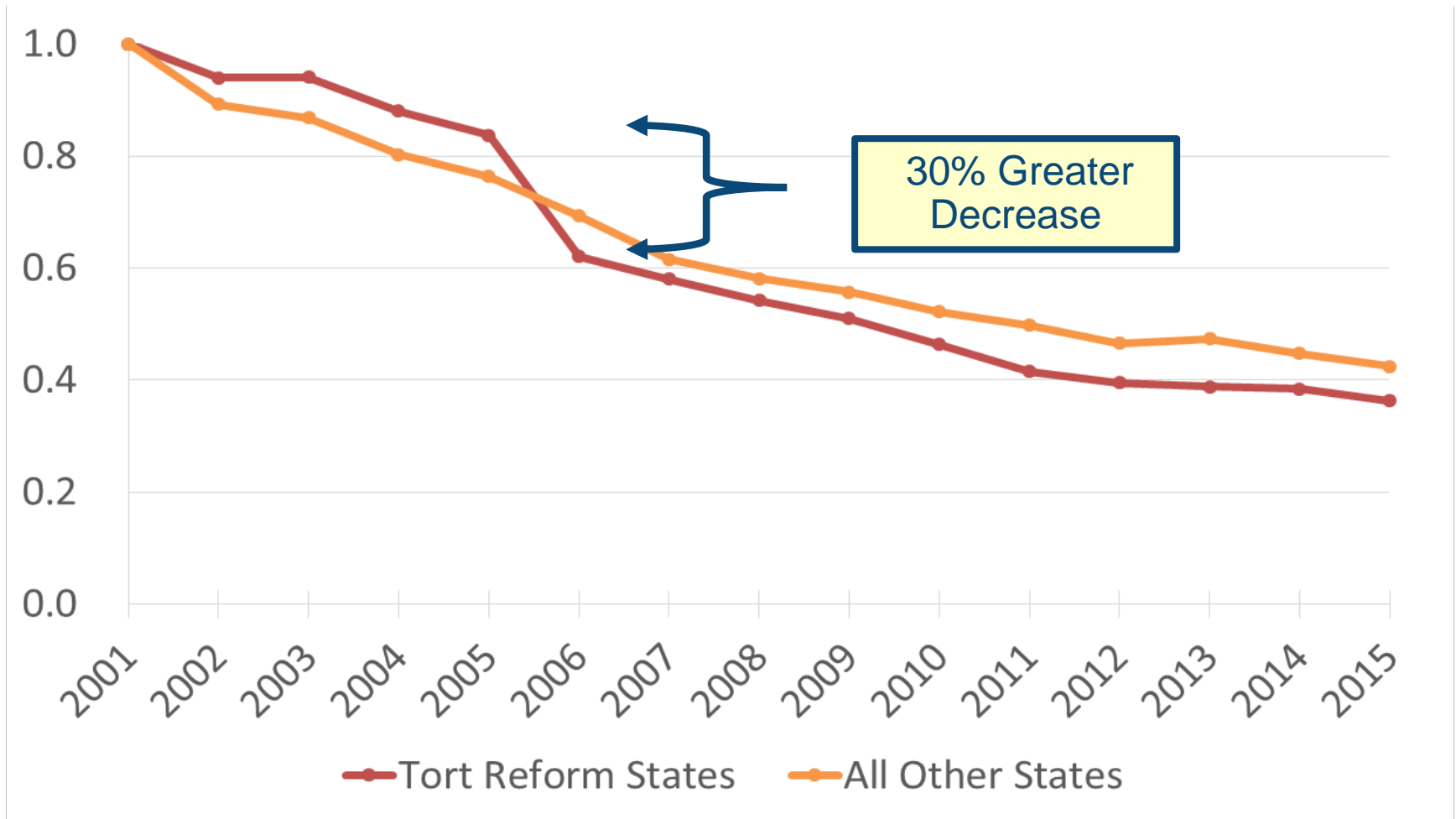
Source: Milliman analysis of data from the National Practitioner Data Bank Public Use Data File.

# Oregon Claim Frequency Relative to Countrywide



Source: Milliman analysis of data from the National Practitioner Data Bank Public Use Data File and the American Medical Association.

# Claim Frequency of the Seven States Implementing Tort Reform 2003 – 2005 Relative to All Others



Source: Milliman analysis of data from the National Practitioner Data Bank Public Use Data File and the American Medical Association. Tort reform states are Florida, Mississippi, Nevada, Oklahoma, South Carolina, and Texas. Data normalized to 2001.

# Topic 3: Access to Healthcare



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# Caps Improve Physician Supply

“The adoption of ‘direct’ malpractice reforms led to greater growth in the overall supply of physicians.”

Source: Kessler, Daniel P., William M. Sage, and David J. Becker. 2005.

“Impact of Malpractice Reforms on the Supply of Physician Services,”  
JAMA. Vol. 293(21):2618-2625. doi:10.1001/jama.293.21.2618.

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# Caps Improve Access to High-Risk Specialists

“[...] Evidence clearly indicates an increase in physicians in high risk specialties after the adoption of noneconomic damage caps [...].”

Source: Helland, Eric and Seth A. Seabury. 2014. “Tort Reform and Physician Labor Supply: A Review of the Evidence,” RAND Institute for Civil Justice.

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# Caps Improve Access to Surgical Providers

“Malpractice insurance premiums are a significant deterrent for surgeons.... In addition, caps on malpractice damage awards attract surgeons to areas.”

Source: Chou, C. F. and A. T. Lo Sasso. 2009. “Practice Location Choice by New Physicians: The Importance of Malpractice Premiums, Damage Caps, and Health Professional Shortage Area Designation,” *Health Services Research*, Vol. 44: 1271–1289. doi: 10.1111/j.1475-6773.2009.00976.x.

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# Caps Improve Access to Obstetricians

“The supply of obstetrician-gynecologists decreased by 8 percent in the three years following premium increases in 1999.”

Source: Mello, Michelle M., David M. Studdert, Jennifer Schumi, Troyen A. Brennan and William M. Sage. 2007. “Changes In Physician Supply And Scope Of Practice During A Malpractice Crisis: Evidence From Pennsylvania,” *Health Affairs*. Vol. 26, no.3:w425-w435 (published online April 24, 2007; 10.1377/hlthaff.26.3.w425).

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# Caps Improve Access to Specialists in Rural Areas

“Caps appear to increase the supply of frontier rural, specialist physicians by 10-12 percent.”

Source: Matsa, David A. 2007. “Does Malpractice Liability Keep the Doctor Away? Evidence from Tort Reform Damage Caps,” *Journal of Legal Studies*. Vol 36(2):S143-S182.

# Topic 5: Other Considerations

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# Other Considerations

- **Oral Discussion** - This document is not complete without the accompanying oral discussion and explanation of the underlying projections, results and variability.
- **Limited Distribution** – This document should not be distributed, disclosed, or otherwise furnished, in whole or in part, without the express written consent of Milliman.
- **Reliance on Data** - In performing this analysis, we relied upon data provided by others, as documented throughout this presentation. We performed a limited review of the data used directly in our analysis for reasonableness and consistency. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or relationships that are materially inconsistent. Such a detailed review was beyond the scope of our assignment.

# Appendix: Monte Carlo Simulation Model



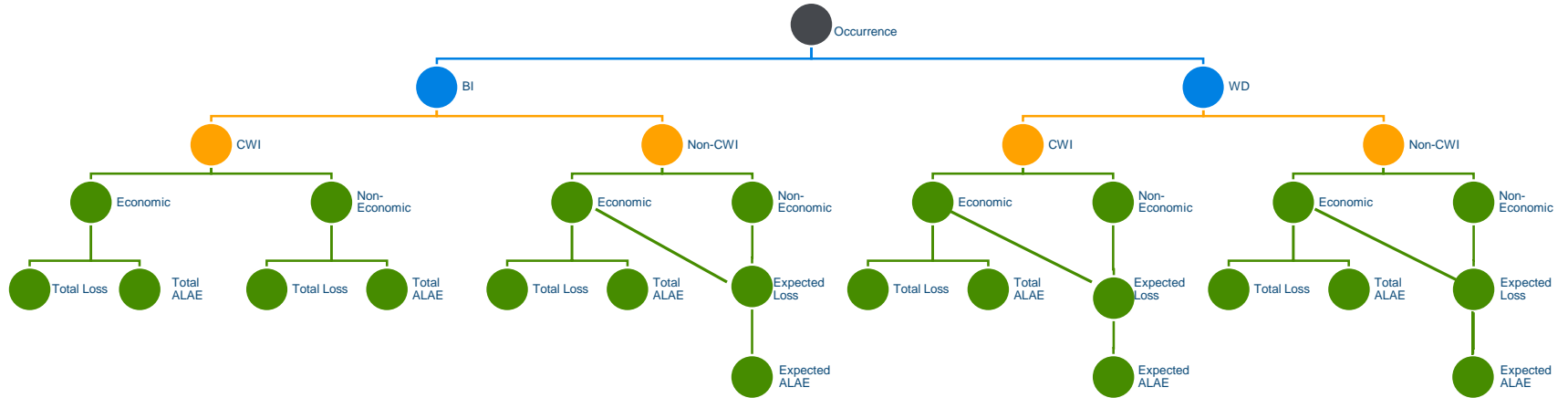
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# Overview of Simulation Model Oregon Medical Liability Claims

- Based on Oregon Closed Claim Data
- Data Provided by Three Largest Providers of Medical Liability Coverage in Oregon
- 18,000+ claims over 15+ years
- 25+ fields maintained in database
- Resulting model yielded a process with 100,000 simulated occurrences of medical misadventure

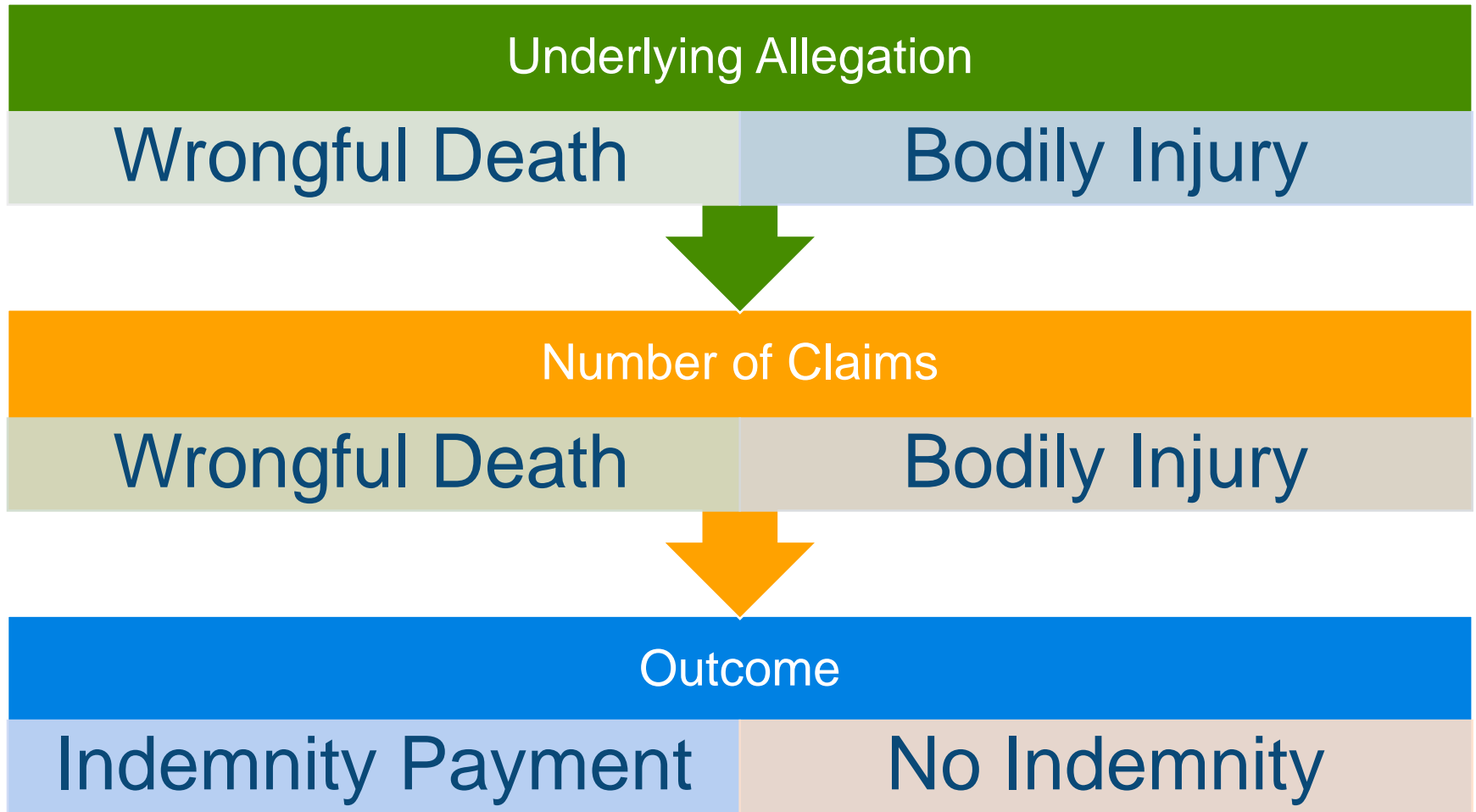
# Overview of Simulation Model

## Steps of Simulation Process

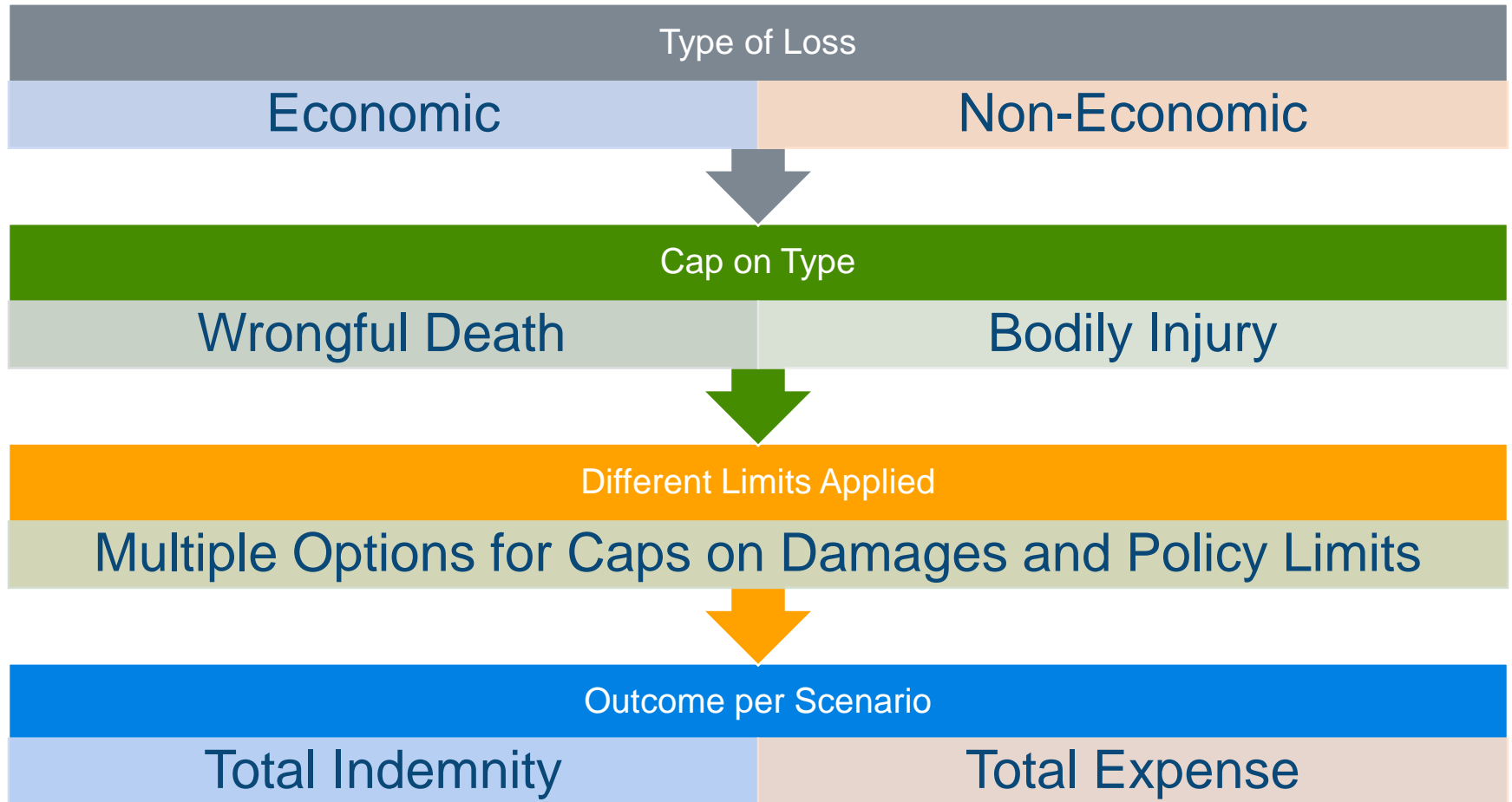


# Overview of Simulation Model

## Occurrence of Medical Misadventure

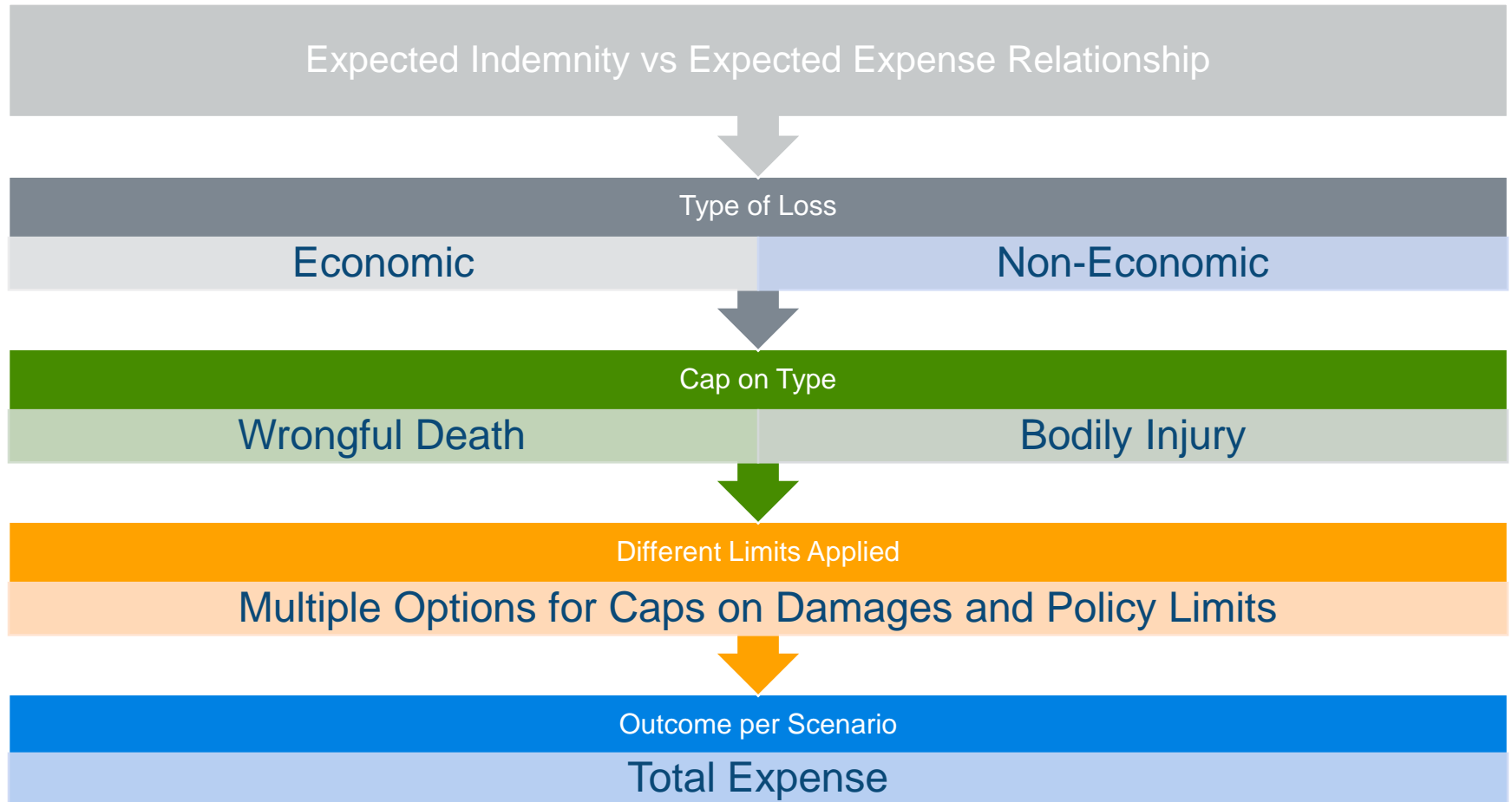


# Overview of Simulation Model Claims with Indemnity Payment



# Overview of Simulation Model

## Claims Closed with Expense Only



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# Reasonability Tests of Simulation Model

- Tests against the Oregon Closed Claim Data
  - Test 1: Portion of claims by type
  - Test 2: Modeled severity versus calculated severity
  - Test 3: Average indemnity severity limited to \$1,000,000\*
  - Test 4: Average expense per claim closed with indemnity
  - Test 5: Average expense per claim closed with expense only
  - Tests 2 through 5 performed separately for Bodily Injury and Wrongful Death claims
- Objective was to Balance the Results from All the Tests Simultaneously

\*Chosen based on typical minimum policy limit of \$1,000,000 per claim.



**Thank you**

[susan.forray@milliman.com](mailto:susan.forray@milliman.com)



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



Melissa Erlbaum, MPA  
Executive Director

February 24, 2017  
Senate Judiciary Committee  
Salem, OR 97301

**Re: Testimony in support of Senate Bill 487**

Chair Prozanski and members of the Judiciary Committee:

My name is Melissa Erlbaum, and I am the Executive Director of Clackamas Women's Services (CWS). For over 30 years, our organization has provided critical services — including emergency and confidential shelter, a 24/7 crisis line, mental health counseling, support groups, legal advocacy, and community education — to survivors of sexual assault, domestic violence, elder abuse, and human trafficking. Despite our longevity, there is nothing that would please me more than to be able to shutter our doors — as the result of the total eradication of interpersonal violence in our community.

Unfortunately, however, that dream may never be realized. Our requests for services increase with each passing year, as do the number of victims in our community. For instance, CWS's crisis line received nearly 2,500 calls for emergency shelter services last year, while A Safe Place-Family Justice Center (ASP-FJC), where our main office is located, experienced a total of 3,765 walk-in requests for services. Further, we are serving more people of color, elders, those who identify as having a disability, and others from marginalized communities.

We are a proud member of the Restore Justice for Survivors Coalition because we see, firsthand, how imperative it is for the women and children we serve — as well as those who suffer silently — to know they have support and their abusers will be held accountable for their actions through our criminal and civil justice systems. It is empowering for victims to know a jury of 12 Oregonians, just like them, will hear the facts of the case and determine the outcome impartially.

Sadly, we also often see cases where responsible actions by a business, institution, or organization could have been taken to prevent these violent acts against our clients. Such responses negatively impact victims and effectively create additional barriers to their pursuits of safety and justice. Consequently, when these groups turn a blind eye, refuse to act, or fail to implement policies to protect us, they should be held accountable. It is often accountability that spurs positive, systemic change.

The tragic story of Betty Rotting demonstrates this. Betty was 73 years old when she was transported by ambulance to the hospital for heart surgery. While in the back of the ambulance, she was sexually assaulted by the EMT who was entrusted with her care. This wasn't the first time this EMT assaulted a patient; there had been 35 complaints to the emergency response company about him throughout his tenure. However, instead of pulling him from service and investigating, the company continued to allow him to be alone with female patients. Betty's assaulter was later sentenced to five years in prison and the company was found negligent for doing nothing to protect women patients from

*Finding a Path Forward to Safety, Justice and Healing*  
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Melissa Erlbaum, MPA  
Executive Director

this sexual predator. As a result of Betty's case — as well as the cases of 5 of his other victims — the emergency response company made changes to the ambulance design; there is no longer a wall between the driver and the EMT/patient area, enabling the driver to have an unobstructed view of the back of the ambulance. This a clear example of positive policy change coming from holding institutions accountable and demanding better and safer systems.

As this story and countless others attest, survivors deserve justice. We can no longer afford to sit idly by and allow abuses to take place without accountability. I hope you will join us in our desire to restore justice by supporting Senate Bill 487.

Sincerely,

Melissa Erlbaum  
Clackamas Women's Services, Executive Director



**Testimony of Kimberly McCullough, Legislative Director  
In Support of SB 487  
Senate Committee on Judiciary  
February 28, 2017**

Chair Prozanski and Members of the Committee:

I am Kimberly McCullough, Legislative Director for The American Civil Liberties Union of Oregon (ACLU of Oregon). We are a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 28,000 members in the State of Oregon, and that number is growing as we speak. The ACLU of Oregon strongly supports Senate Bill 487.

Amongst the most basic of civil liberties is the right to a jury trial. This right was crucially important to our national and state founders, as it is protected in both the Bill of Rights of our U.S. Constitution and our Oregon Constitution. When Oregonians fought for the right to bring citizen initiatives to the ballot in the early 1900s, one of the first citizen-led initiatives was to strengthen the power of juries. It passed overwhelmingly. And in the last 16 years, Oregon voters have twice been asked to limit the power of juries and both times rejected these attempts to circumvent our democratic system of justice.

If an Oregonian is a victim of a traumatic, life-changing event, he or she has a constitutional right to hold the negligent party accountable for their actions. Restrictive, one-size-fits-all caps undermine the judicial branch as a pillar of our democracy. They remove case-by-case justice that should be afforded to victims and survivors. Access to a fair jury trial is a fundamental right. Twelve people from our local communities come together to hear both sides of a case and render a decision based on the facts.

You, as legislators, have the power to right the wrongs of the court's decision in *Horton*, and to protect the sanctity of our right to trial by jury. The finding of the court essentially said that Oregonians have the right to a jury trial, but not a jury decision, rendering the right to a jury trial in civil cases as simply procedural. It makes little sense that we entrust juries to choose when to convict and imprison individuals in criminal cases, but we do not entrust juries to make a decision about the impact of life-long injuries on their fellow Oregonians.

One-size-fits-all justice goes against our civil rights and liberties. It allows an across-the-board cap to be placed on the value of one's quality of life and the dramatic changes survivors go through as a result of someone else's negligence or wrongdoing.

For all these reasons, I ask you stand up for our civil liberties and fundamental, constitutional right to a trial by a jury of our peers making decisions on a case-by-case basis after hearing the facts. We urge your yes vote on Senate Bill 487.

# SB 487: Eliminating the Noneconomic Damages Limit for Injuries and Doubling the Cap for Wrongful Death is NOT the Answer

Please vote **NO** on SB 487 and HB 2129 to oppose changes to the reasonable and constitutional \$500,000 limit on noneconomic damages recoverable in civil injury lawsuits.



- SB 487 and HB 2129 go too far at a time when costs and access issues continue to increase and when stability in our health care system is so uncertain.
- Objective and *predictable economic damages*, such as past and future medical costs, lost wages and potential lifetime earnings, and any other conceivable loss are **unlimited** and fully recoverable, and that is a fair and reasonable approach to our medical liability system.
- Subjective and *unpredictable noneconomic (pain and suffering) damages* were limited by the Oregon Legislature to bring stability and predictability to our liability system, to improve access to medical care and to create an environment that makes Oregon attractive to practitioners and employers.
- Noneconomic damage caps ensure that patients receive fair compensation while preserving access to healthcare. A recent study by Milliman indicates that maintaining current law will reduce costs for doctors, nurses, and healthcare providers, helping them serve the most vulnerable populations.
- A majority of Western States cap noneconomic damages at or below \$500,000. California caps noneconomic damages at \$250,000 - a decision reaffirmed by voters in 2014.
- The Oregon Supreme Court recently ruled in *Horton vs. OHSU* that it is constitutional for the Legislature to limit noneconomic damages in all civil injury lawsuits.
- SB 487 and HB 2129 will *jeopardize* our already strained healthcare system in rural Oregon by increasing costs to the *Rural Medical Liability Reimbursement Program*. This is a program that ensures Oregonians have access to the broadest possible range of specialty physicians and providers throughout the state and not just in urban areas.
- Oregon's safety-net providers serve thousands of patients, the majority of whom are women and children. These providers are unable to shift higher insurance costs to their patients – which means less funds available for patient care.
- By doubling or eliminating the limit on noneconomic damages in Oregon, professional liability insurance policies will become more expensive. Physicians and providers in high risk specialties, especially those serving patients in rural and underserved areas, could be forced to limit their practices.
- Provisions in both bills apply the new law to actions that occur before, on or after the effective date. This means practitioners who purchased insurance based on the law in place at the time will have the rules changed with no notice and no ability to modify policies for actions that may have already occurred. Further, the legislation would impact cases already in the pipeline. Defendants make decisions about whether or not to go to trial based on the circumstances at the time. Changing the rules in the middle of the game is patently unfair.



For more information, please contact:  
Fawn Barrie, ORLRC - 503.580.5487  
Courtnei Dresser, OMA - 503.380.9488



The following coalition members strongly urge you to vote No on SB 487 and HB 2129:



**Allstate.**  
You're in good hands.



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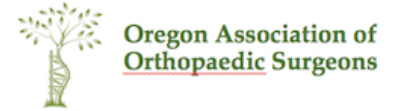
**LEGACY**  
HEALTH



**Mercy Medical Center**



**TUALITY HEALTHCARE**  
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allcare health



**Testimony of Arthur Towers in Support of SB 487**  
**Senate Judiciary Committee**  
**February 28, 2017**

Testimony from others today demonstrates that SB 487 helps Oregonians injured or killed in a variety of settings. Many injuries and deaths caused by negligence happen outside the medical field. Lifelong trauma caused by child abuse, sexual abuse, and elder abuse are impacted by the arbitrary cap on compensation. The cap impacts compensation for injuries caused by defective products, car crashes, and in a variety of other settings. Disfigurement, paralysis the loss of a limb, and the loss of ability to have children are all examples of injuries impacted by the cap.

Oregon is a laboratory for the impact of the outright elimination of caps on non-economic damages. The State Supreme Court unanimously ruled in 1999 ruled that this compensation in injury cases could not be limited. This held until 2016 when a split Supreme Court effectively reinstated the cap in injury cases.

**The Number of Doctors in Oregon Grew Rapidly After**  
**Caps on Compensation for Injury Were Removed in 1999**

Looking at the relative number of physicians from 1999 to the present, we can see what has happened after the complete removal of the injury caps in Oregon.

This is instructive since SB 487 would return the compensation cap for injury cases to the system in place from 1999 -2016. SB 487 simply indexes the cap in death cases for inflation since 1987.

	# of licensed MDs in Oregon	Oregon population
2000	7,848	3,421,399
2015	12,447	4,028,977
% increase	47%	18%

Source: Oregon Medical Board (formerly Board of Medical Examiners)

According to statistics by county from 2004 forward from the Oregon Medical Board (formerly the Oregon Board of Medical Examiners), **the number of MDs in 33 of the 36 counties increased by more than 23% over the last 11 years.** As the attached chart indicates, many of our state’s rural counties saw large increases (Grant, Harney, Jefferson, Polk, and Tillamook all saw the number of doctors more than double.). The three outliers were Coos with “only” a 16% increase, Lake which went from 8 doctors to 6, and Sherman which lost its only doctor. The statistics are pretty similar for Osteopaths, Physician Assistants, and other licensees covered by the medical board.



For doctors, there are many factors that go into the decision about where to locate one's family and set up a business. The removal of the compensation cap on injuries in Oregon has not caused a decrease in physicians statewide or in rural Oregon.

We don't want to overstate cause and effect nor do we want to minimize the importance of access to medical care. But in our analysis of the numbers, we cannot see any indication that the outright removal of the injury cap has kept doctors out of Oregon, nor would a simple increase in the cap on compensation for grieving families.

### **Comparisons to Other States: Data Indicate More Physicians and Lower Premiums**

Information from the American Medical Association's "Physicians Characteristics and Distribution 2015" reveals that -- based on the 2010 census -- Oregon has 357 physicians per 100,000 residents. States with caps have 301 physicians per 100,000 residents.

Oregon malpractice premiums are lower than in states with compensation caps, according to October 2015 information from the Medical Liability Monitor. Across internists, general surgeons, and OB/GYNs, premiums in states with compensation caps are 26% higher. Please see the specifics in the attachments.

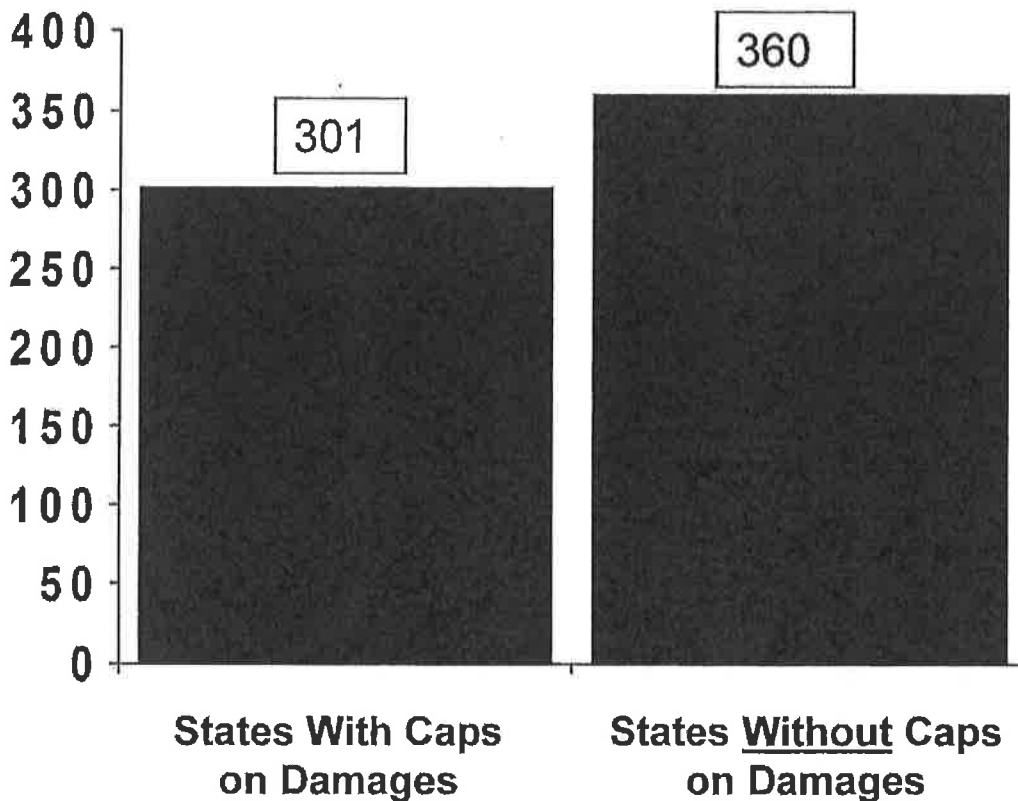
### **1/3 of All Medical Malpractice Cases are Linked to 1% of Physicians (New England Journal of Medicine, 2016)**

Injuries and wrongful deaths occur in a wide variety of settings -- not just within the medical industry. That said, a 2016 edition of the New England Journal of Medicine reveals that a tiny percentage of doctors are responsible for an extraordinarily large proportion of medical malpractice tragedies. There has to be a better way to tackle the problem created by this 1% of doctors than to limit access to justice for grieving families.

	MDs by County		Increase
	2015	2004	
Baker	70	19	268%
Benton	306	194	58%
Clackamas	1,045	630	66%
Clatsop	107	55	95%
Columbia	24	16	50%
Coos	146	126	16%
Crook	23	14	64%
Curry	39	26	50%
Deschutes	546	312	75%
Douglas	218	176	24%
Gilliam	1	-	NA
Grant	11	4	175%
Harney	20	6	233%
Hood River	96	54	78%
Jackson	645	431	50%
Jefferson	32	13	146%
Josephine	168	113	49%
Klamath	159	125	27%
Lake	6	8	-25%
Lane	954	719	33%
Lincoln	74	56	32%
Linn	171	130	32%
Malheur	106	58	83%
Marion	817	554	47%
Morrow	7	5	40%
Multnomah	4,373	3,563	23%
Polk	70	28	150%
Sherman	-	1	-100%
Tillamook	58	27	115%
Umatilla	184	95	94%
Union	76	46	65%
Wallowa	16	7	129%
Wasco	101	54	87%
Washington	1,677	871	93%
Wheeler	2	-	NA
Yamhill	201	122	65%
None/NA		500	-100%
	12,549	9,158	37%

# Are Doctors Really Closing Their Doors?

## Number of Physicians Per 100,000 Population: 2013



**In 2013, there were 20% more physicians per 100,000 population in states without caps than there were in states with caps.**

A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases. Physician numbers from "Physician Characteristics and Distribution 2015," American Medical Association (AMA).

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TREATMENTS

## A Few Doctors Account For Outsize Share Of Malpractice Claims

Updated January 29, 2016 · 5:34 PM ET

Published January 28, 2016 · 10:59 AM ET

LISA ALIFERIS

Just 1 percent of doctors are linked to nearly one-third of all paid malpractice claims, an analysis by researchers at Stanford finds. And the physicians who account for an outsize share of the claims have a set of distinctive characteristics.

The researchers said that the claim-prone physicians were disproportionately male (82 percent) and were older, rather than younger. More than half the claims were by doctors in four areas: internal medicine, obstetrics and gynecology, general surgery and general practice/family medicine.

But the biggest predictor of all for claim-prone doctors was whether they'd had a prior claim.

"Compared to physicians with only one previous claim," Studdert said, "a physician who has had three previous claims is three times as likely to have another one," said lead author David Studdert, a professor of medicine and law at Stanford. "A physician who has had four is four times more likely and so on."

In the study, published in the latest issue of the *New England Journal of Medicine*, researchers looked at more than 66,000 malpractice claims paid against 54,000 physicians nationwide between 2005 and 2014.

The researchers focused on paid, rather than unpaid, claims, because those are markers for substandard care. About 1 in 3 malpractice claims is ultimately paid. In the claims the researchers reviewed, one-third resulted in patient death and another 54 percent in serious injury.

The study noted that only 6 percent of doctors had any paid claims over the 10-year period studied.

In the study the researchers are clear that they have identified risk factors but that it's up to health care systems, hospital and malpractice insurers to identify and work with these doctors. "This problem of physicians who accumulate multiple claims and continue to practice ... is a significant policy problem and one that we need to address," Studert said.

But he and his colleagues noted that few of these organizations do. "With notable exceptions," the researchers write, "fewer still systematically identify and intervene with practitioners who are at high risk for future claims."

The authors of the paper call for further investigation into predicting which doctors are at risk and then implementing interventions such as training and supervision to improve their quality of care.

In California, patients can look up their doctor on the state's medical board website. Depending on the type of malpractice settlement, it will be part of the public record if the doctor has had either three or four settlements within a five-year period. Other information is also available, including whether your doctor has had a felony conviction or is on probation. Patients can use the website simply to determine that a doctor's license is valid.

But advocates like Lisa McGiffert, with Consumers Union's Safe Patient Project, say that's not enough. They have been pushing the Medical Board of California to require that doctors placed on probation notify their patients. The board has resisted taking this step.

While probation and multiple malpractice claims are not necessarily linked, McGiffert says she hopes doctors will pay attention to this study. "I have this sense that doctors as a group protect other doctors who are on probation or get in trouble because they think it might happen to them," she said. But since this study demonstrates that a small percentage of doctors are responsible for a disproportionate number of claims, it should be reassuring to physicians.

"This study is one more piece of information that regulators can use in determining their strategy in addressing the small percentage of doctors who have problems in their treatment of patients," McGiffert said.

*A version of this story first appeared on KQED's State of Health blog.*

Arthur Towers, OTLA 503-799-1017  
arthur@oregontriallawyers.org

## LICENSING STATISTICS BY TYPE AND STATUS

As of March 4, 2004

PROFESSION	ACTIVE (Permanent)	INACTIVE	EMERITUS	EMERITUS INACTIVE	LOCUM TENENS	LIMITED LICENSE	TOTAL
Medical (MD)	8,579	1,626	506	67	228	577	11,583
Osteopathy (DO)	486	98	14	5	20	20	643
Acupuncture (LAc)	545	49	0	0	6	47	647
Podiatry (DPM)	135	27	1	1	1	9	174
Physician Assistant (PA)	513	45	0	0	0	16	574
<b>TOTALS</b>	<b>10,258</b>	<b>1,845</b>	<b>521</b>	<b>73</b>	<b>255</b>	<b>669</b>	<b>13,621</b>

## LICENSING STATISTICS BY OREGON COUNTY MDs and DOs (ACTIVE ONLY)

As of March 4, 2004

COUNTY (Seat)	MDs	DOs
BAKER (Baker City)	19	4
BENTON (Corvallis)	194	14
CLACKAMAS (Oregon City)	630	66
CLATSOP (Astoria)	55	2
COLUMBIA (St. Helens)	16	1
COOS (Coquille)	126	4
CROOK (Prineville)	14	4
CURRY (Gold Beach)	26	5
DESCHUTES (Bend)	312	16
DOUGLAS (Roseburg)	176	22
GILLIAM (Condon)	0	0
GRANT (Canyon City)	4	1

(continued on page 5)

**Licensing Statistics By Oregon County** (continued from page 4)

<b>HARNEY</b> (Burns)	6	0
<b>HOOD RIVER</b> (Hood River)	54	0
<b>JEFFERSON</b> (Madras)	13	1
<b>JACKSON</b> (Medford)	431	34
<b>JOSEPHINE</b> (Grants Pass)	113	15
<b>KLAMATH</b> (Klamath Falls)	125	5
<b>LINCOLN</b> (Newport)	56	9
<b>LINN</b> (Albany)	130	6
<b>LAKE</b> (Lakeview)	8	1
<b>LANE</b> (Eugene)	719	25
<b>MALHEUR</b> (Vale)	58	5
<b>MORROW</b> (Heppner)	5	0
<b>MARION</b> (Salem)	554	20
<b>MULTNOMAH</b> (Portland)	3,563	147
<b>POLK</b> (Dallas)	28	9
<b>SHERMAN</b> (Moro)	1	0
<b>TILLAMOOK</b> (Tillamook)	27	1
<b>UMATILLA</b> (Pendleton)	95	15
<b>UNION</b> (La Grande)	46	2
<b>WASHINGTON</b> (Hillsboro)	871	31
<b>WALLOWA</b> (Enterprise)	7	1
<b>WASCO</b> (The Dalles)	54	5
<b>WHEELER</b> (Fossil)	0	0
<b>YAMHILL</b> (McMinnville)	122	7
<b>NONE / NOT APPLICABLE</b>	500	28

**LICENSING STATISTICS BY SPECIALTY WILL APPEAR IN THE SUMMER 2004 ISSUE.**

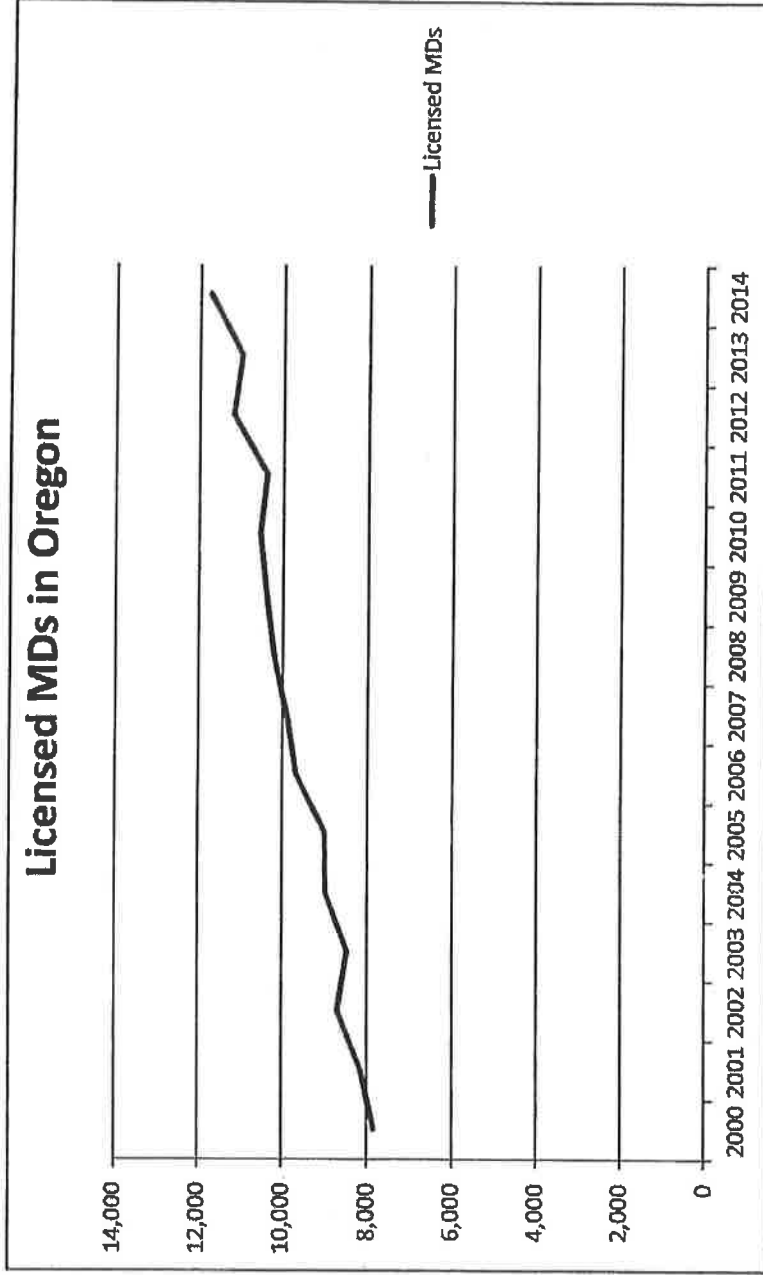
## LICENSEES BY COUNTY - As of May 1, 2015

The mission of the Oregon Medical Board is to protect the health, safety and wellbeing of Oregon citizens by regulating the practice of medicine in a manner that promotes access to quality care. To more closely reflect the current status of access to quality medical care in Oregon, this table is being reprinted. The revised data includes current practice addresses reported by licensees who have full licenses at practicing statuses. If a licensee provides practice addresses in more than one county, the licensee will be counted in each county. Therefore, the data does not represent full-time clinical practitioners in each county. †

County (Seat)	MDs	DOs	DPMs	PAs	LACs	Total	Population
Baker (Baker City)	70	8	1	11	1	91	16,059
Benton (Corvallis)	306	77	4	53	25	465	86,316
Clackamas (Oregon City)	1,045	106	16	106	94	1,367	394,972
Clatsop (Astoria)	107	10	2	14	8	141	37,474
Columbia (St. Helens)	24	5	0	18	5	52	49,459
Coos (Coquille)	146	14	4	14	5	183	62,475
Crook (Prineville)	23	7	1	10	3	44	20,998
Curry (Gold Beach)	39	13	1	7	2	62	22,335
Deschutes (Bend)	546	52	12	124	60	794	170,388
Douglas (Roseburg)	218	40	6	33	5	302	106,972
Gilliam (Condon)	1	0	0	2	0	3	1,932
Grant (Canyon City)	11	1	0	0	2	14	7,180
Harney (Burns)	20	2	0	3	0	25	7,126
Hood River (Hood River)	96	6	1	18	16	137	22,885
Jackson (Medford)	645	73	12	76	50	856	210,287
Jefferson (Madras)	32	2	0	3	2	39	22,192
Josephine (Grants Pass)	168	21	4	30	17	240	83,599
Klamath (Klamath Falls)	159	11	2	16	4	192	65,455
Lake (Lakeview)	6	2	0	2	0	10	7,838
Lane (Eugene)	954	65	11	136	67	1,233	358,337
Lincoln (Newport)	74	17	2	26	10	129	46,406
Linn (Albany)	171	29	2	31	6	239	119,356
Malheur (Vale)	106	12	3	27	0	148	30,359
Marion (Salem)	817	67	11	107	39	1,041	326,110
Morrow (Heppner)	7	0	0	5	0	12	11,187
Multnomah (Portland)	4,382	256	46	454	690	5,828	776,712
Polk (Dallas)	70	22	1	17	2	112	77,916
Sherman (Moro)	0	1	0	1	0	2	1,710
Tillamook (Tillamook)	58	3	0	8	4	73	25,342
Umatilla (Pendleton)	184	16	4	24	1	229	76,705
Union (La Grande)	76	12	1	3	6	98	25,691
Wallowa (Enterprise)	16	0	0	1	3	20	6,820
Wasco (The Dalles)	101	7	1	15	6	130	25,515
Washington (Hillsboro)	1,677	76	24	271	127	2,175	562,998
Wheeler (Fossil)	2	0	0	2	0	4	1,375
Yamhill (McMinnville)	201	17	7	28	11	264	101,758



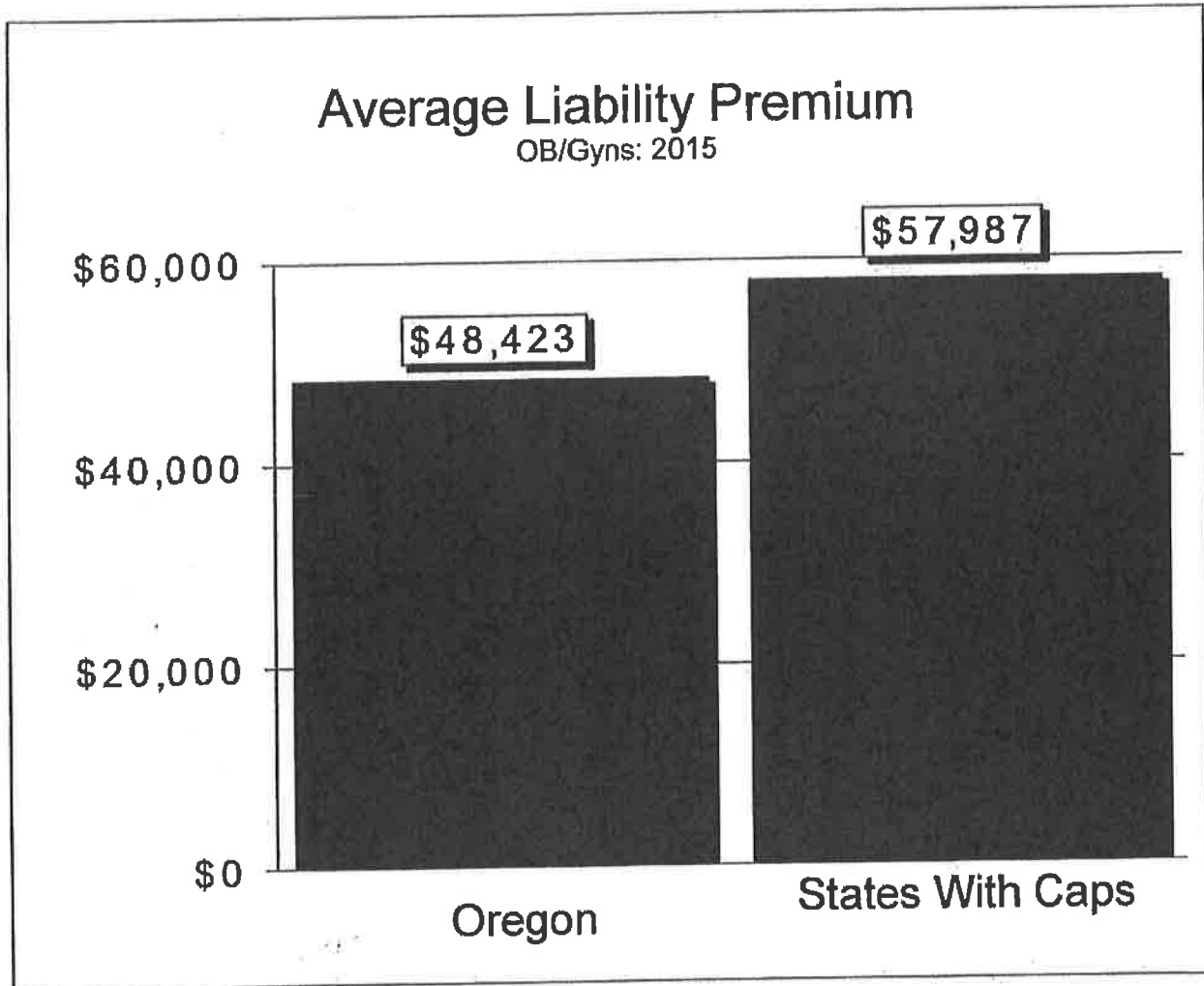
Oregon Medical Board - Annual Licensing Statistics  
 Active MD Members, years 1999-2014



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Licensed MDs	7,848	8,146	8,696	8,469	8,986	8,997	9,691	9,915	10,211	10,389	10,546	10,389	11,203	11,005	11,761	12,447

Source: Oregon Medical Board Newsletter  
<http://www.oregon.gov/OMB/board/Pages/Newsletters.aspx>

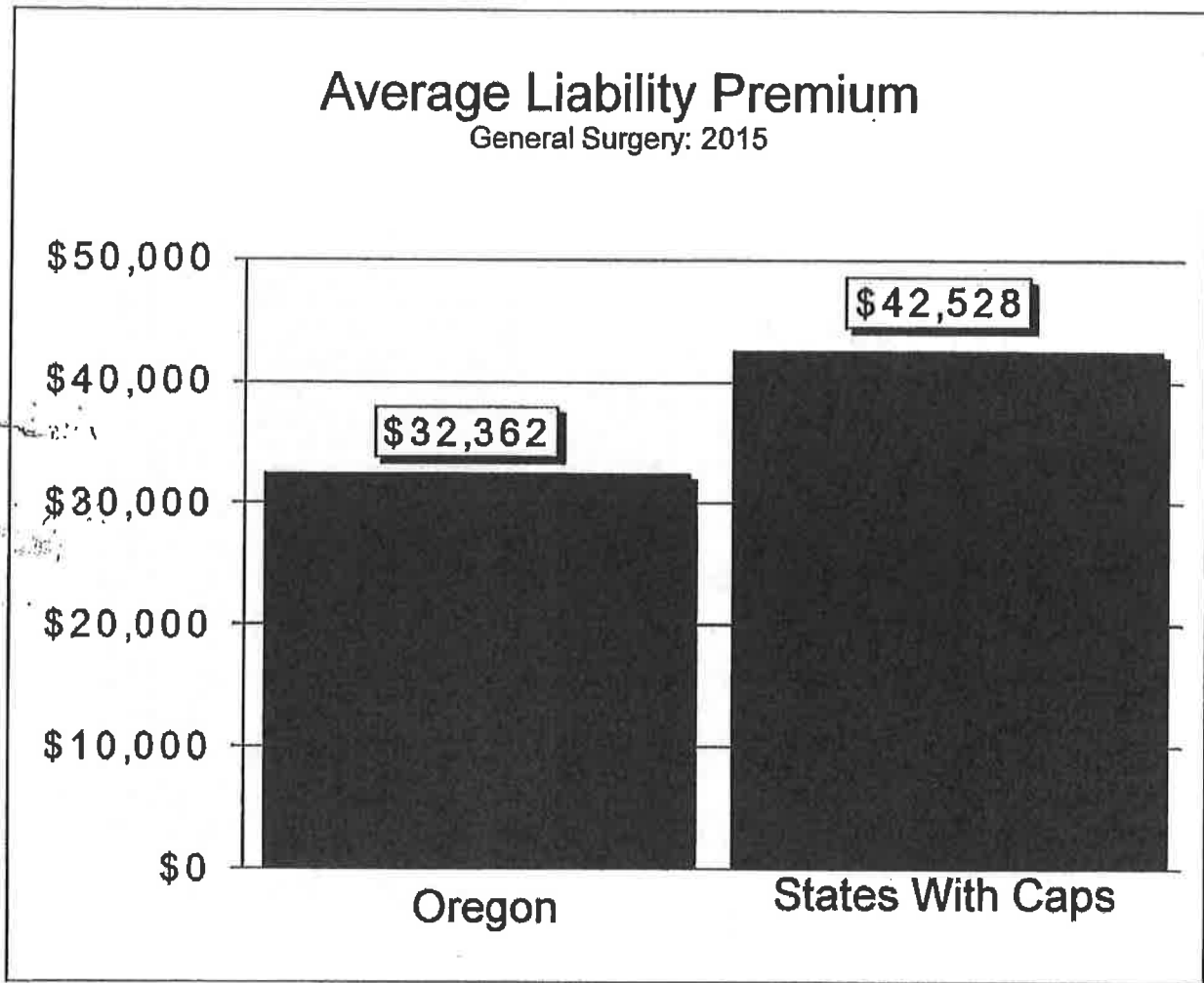
## How Do Physician Premiums Compare In Oregon?



Malpractice Premiums For OB/Gyns Are 20% Higher In States With Caps Than In Oregon.

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

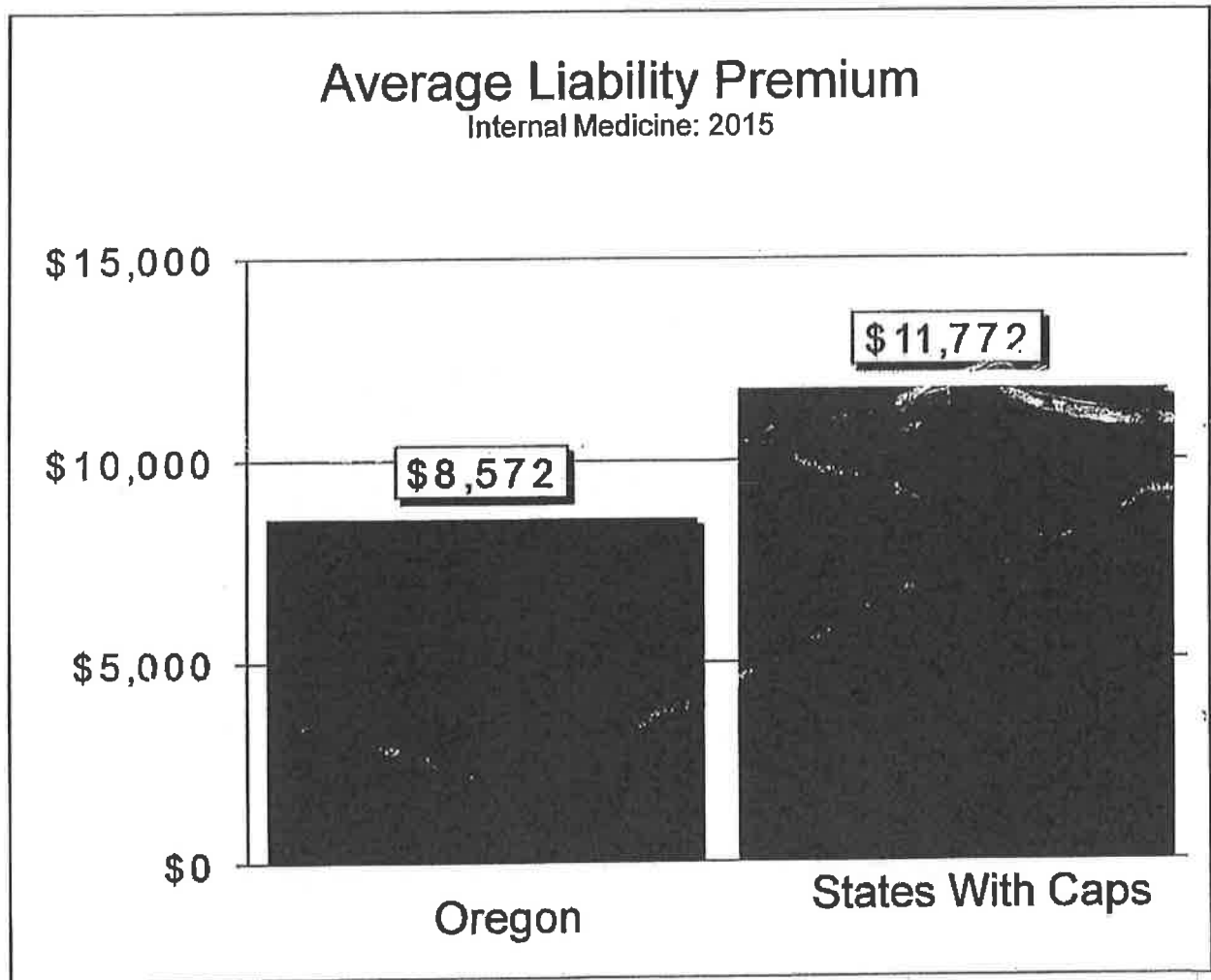
# How Do Physician Premiums Compare In Oregon?



**Malpractice Premiums For General Surgery Are 31% Higher In States With Caps Than In Oregon.**

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

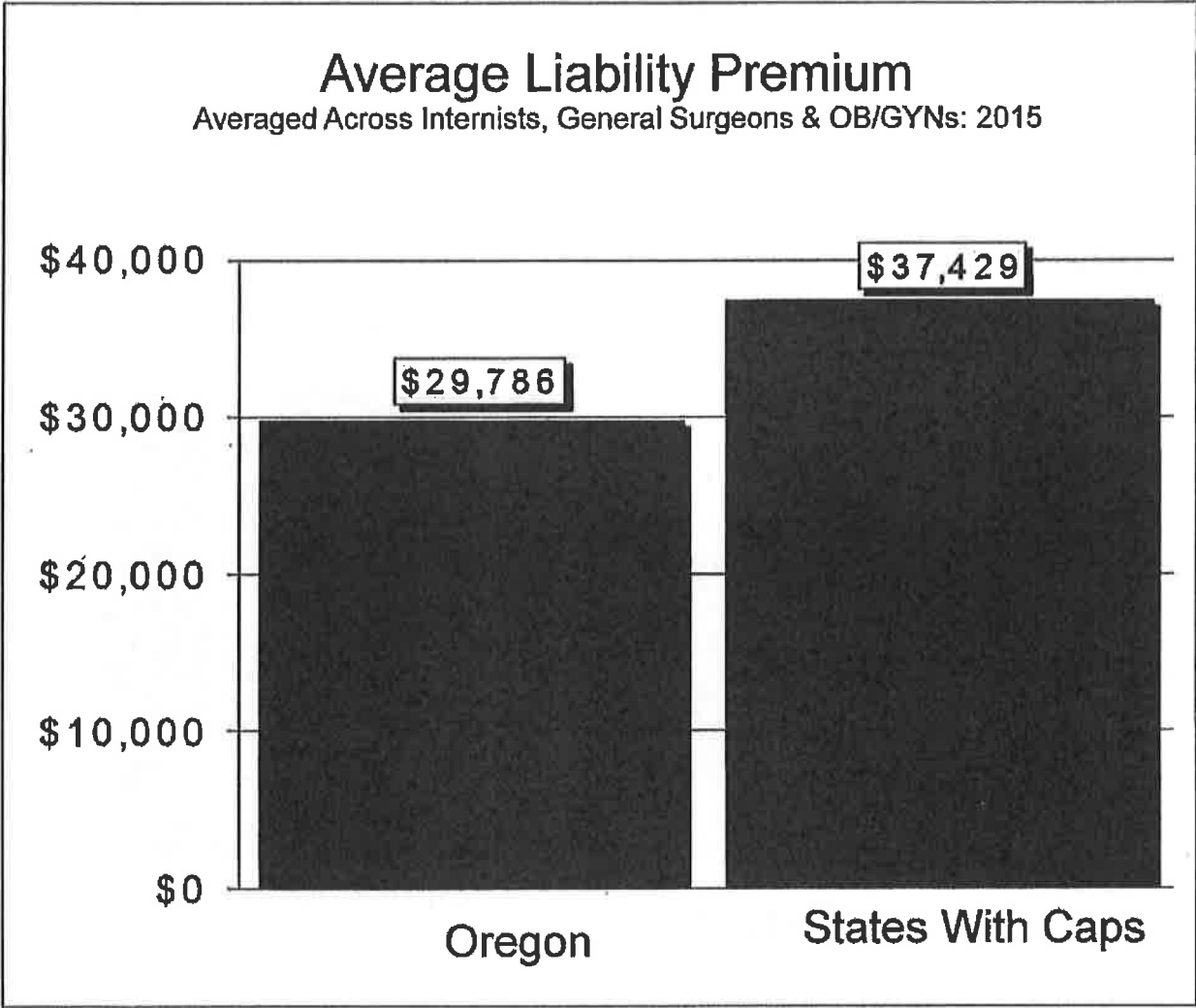
## How Do Physician Premiums Compare In Oregon?



Malpractice Premiums For Internal Medicine Are 37% Higher In States With Caps Than In Oregon.

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

# How Do Physician Premiums Compare In Oregon?

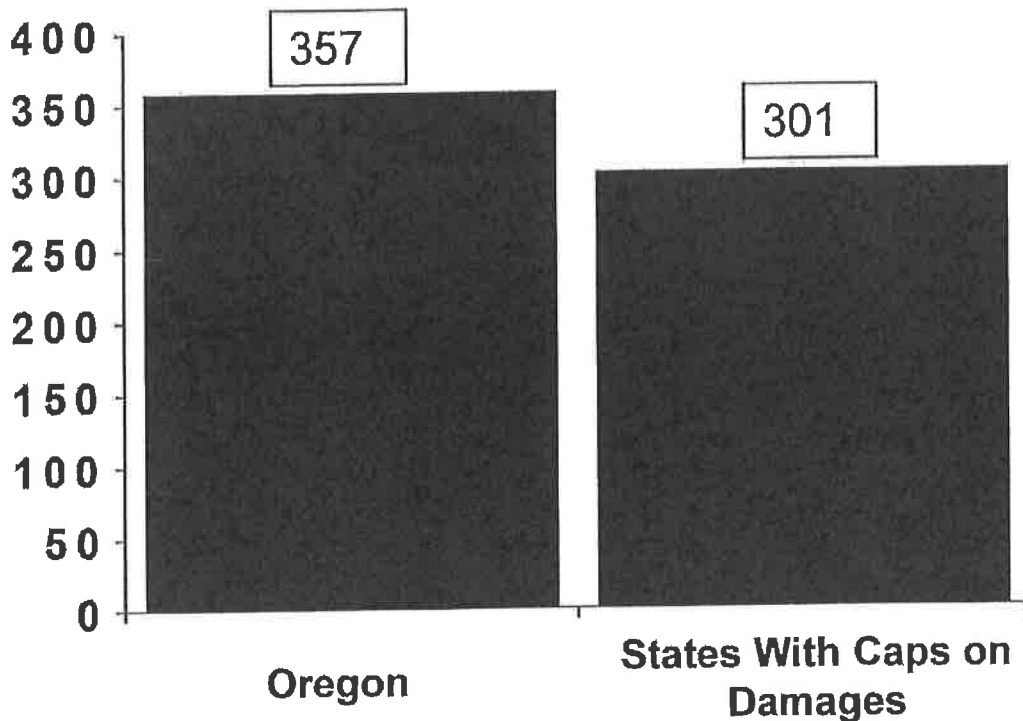


**Malpractice Premiums For Doctors Averaged Across Specialties Are 26% Higher In States With Caps Than In Oregon.**

Derived from data provided by Medical Liability Monitor (October 2015) A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

# Are Doctors Really Closing Their Doors?

**Number of Physicians  
Per 100,000 Population: 2010**



**In 2013, there were Nearly 19% more physicians per 100,000 population in Oregon than there were in states with caps on damages.**

A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases. Physician numbers from "Physician Characteristics and Distribution 2015, American Medical Association (AMA).

# RESTORE JUSTICE

for Survivors

**The issue:** A May 2016 ruling by the Oregon Supreme Court reversed the will of the voters and severely restricted the rights of people who have been harmed due to the negligent actions of others. Now there is an arbitrary, one-size-fits-all cap on what a jury can decide is fair when holding wrongdoers accountable.

**What it means:** Oregonians' right to a fair jury trial is at risk and cases will no longer be decided based on the facts, on a case-by-case basis.

**Who is affected:** Any Oregonian who seeks justice. The severely injured, paralyzed, disfigured, or traumatized will face the harshest effects. Survivors of sexual abuse, elder abuse or other life-changing events causing long-term trauma will be impacted. The cap also impacts those who have suffered from discrimination or fraud.

**What to know:**

- ✓ The cap is arbitrary and in place no matter the facts of the case, even in cases of serious harm or abuse. No matter how great the injury or disability or how egregious the negligence, the cap stands. The cap also affects people who have been victims of fraud and discrimination.
- ✓ The cap is in place no matter what a jury decides – and jurors only learn of the cap after they have issued their ruling.
- ✓ The cap reduces incentives for corporations and other wrongdoers to behave responsibly.
- ✓ The new cap is counter to the will of the voters. Oregon voters twice rejected compensation caps – Measure 81 in 2000 and Measure 35 in 2004. Measure 81 was rejected by a 2-1 margin.
- ✓ The new cap changes the rules on a system that has worked well. In 1999, the Oregon Supreme Court, in a unanimous decision, banned compensation caps in cases involving injury, abuse, or fraud.
- ✓ The new cap moves Oregon from a state leading in protecting its citizens' fundamental, constitutional right to a jury trial to one of the five most restrictive in the country.

## ***Senate Bill 487 & House Bill 2129:***

- Restore authority for juries to make decisions about injuries based on a case-by-case basis
- Restore ability to hold private corporations and institutions accountable when they are negligent or cause harm.
- Restore the will of the voters
- Restore justice for survivors
- Increase compensation for grieving families who have lost a loved one due to someone else's negligence. The cap on compensation for non-economic damages in wrongful death cases – which has been capped at \$500,000 since 1987 -- will be adjusted for 30 years of inflation.

[www.RestoreJusticeForSurvivors.org](http://www.RestoreJusticeForSurvivors.org)

# RESTORE JUSTICE for Survivors

American Civil Liberties Union of Oregon (ACLU)

Survivors Network of Those Abused by Priests (SNAP)

Oregon Coalition Against Domestic and Sexual Violence

Clackamas Women's Services

Brain Injury Alliance of Oregon (BIAO)

Godly Response to Abuse in the Christian Environment (GRACE)

Disability Rights Oregon (DRO)

Oregon Building Trades Council

Common Cause Oregon

Street Trust (formerly Bicycle Transportation Alliance)

Oregon Consumer League (OCL)

National Center for Victims of Crime

International Brotherhood of Electrical Workers Local 48 (IBEW)

Oregon Trial Lawyers Association (OTLA)

Crime Victims United

Oregon Abuse Advocates and Survivors in Service (OAASIS)

Service Employees International Union Oregon State Council (SEIU)

Oregon and Southwest Washington Families for Safe Streets

The Bus Project

Oregon Commission on Disabilities

Fight Against Sex Trafficking (FAST)

In Our Backyard

Good Deeds



3601 Vincennes Road, Indianapolis, Indiana 46268  
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001  
Phone: 202.628.1558 | Fax: 202.628.1601

February 28, 2017

Oregon State Legislature  
Senate Committee on Judiciary

*sent via email to:*  
[sjud.exhibits@oregonlegislature.gov](mailto:sjud.exhibits@oregonlegislature.gov)

**RE: SB 487, Noneconomic Damages Cap for Wrongful Death -NAMIC's written testimony in OPPOSITION**

Dear Senator Prozanski, Chair; Senator Thatcher, Vice-Chair; and honorable members of the Senate Committee on Judiciary:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Committee on Judiciary for the February 28, 2017, public hearing on SB 487.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 153 members who write property/casualty in the State of Oregon, which represents 44% of the insurance market.

SB 487 would increase the amount of noneconomic damages that may be awarded in a wrongful death cause of action from \$500,000 to \$1 million. The proposed legislation would apply to legal claims that occurred prior to the enactment date of the bill. SB 487 would also, beginning in 2018, require the State Court Administrator to adjust the noneconomic damages cap imposed by the bill by multiplying the limitation amount applicable to the year in which the adjustment is made by the percentage amount determined based upon changes to the cost of living index for the previous calendar year, as set by the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

On behalf of NAMIC's members, we respectfully *oppose* the proposed legislation for the following reasons:

**1) There is no evidence to support the contention that the current cap on noneconomic damages does not adequately address the legal needs and proven damages of litigants -**

Unlike economic damages (lost wages, medical expense, property damages, etc.), which are influenced by inflationary changes in the economy, noneconomic damages (like pain and suffering, emotional damages, hedonic damages, etc.) are not financially impacted by vacillations in the economy. There is no scientific data to support the belief that emotional, psychological, or physical pain today has a greater economic value than it did last year or three years ago. Consequently, there is no clear economic justification for *doubling* the noneconomic damages cap for wrongful death claims.

**2) The proposed legislation will create an unnecessary insurance rate cost-driver, that could adversely impact the cost of insurance to the consumer –**

It is an inevitable and unavoidable fact that when statutory civil damages caps are raised, plaintiff attorneys raise their settlement demands to match the increased damages caps, because lawyers are duty bound to their client to try and recover as much in damages as possible. This is acutely so in wrongful death cases, because basic human-nature leads one to be extra-sensitive and compassionate in cases where there has been a loss of life, so trial attorneys will use the increased damages cap to justify asking juries for the maximum amount of noneconomic damages allowed by law. Further, with a higher noneconomic damages cap, plaintiffs will be encouraged to “build up” their economic damages, so as to support an award from the trier of fact for their higher noneconomic damages claim.

As the amount of settlement demands increase, so to do the legal defense costs associated with litigating disputed claims and the amount of money paid to litigants in inflated damages settlements. These increased claims costs act as an insurance-rate cost driver that could adversely impact affordability of insurance for consumers.

**3) SB 487 could expose insurance policyholders to greater *out of pocket* financial liability exposure -**

The proposed legislation would increase the noneconomic damages cap by \$500,000 dollars, which means that liability insurance coverage limits are more likely to be exhausted quicker; thereby, exposing policyholders to greater out of pocket financial liability exposure. Most consumers do not purchase \$1million in liability coverage, so the proposed legislation will have a significant economic impact on insurance consumers, who will have to either purchase dramatically higher insurance liability coverage limits or expose themselves to greater out of pocket financial liability. This could have an acutely detrimental impact upon small businesses that may have high liability deductibles and/or low coverage limits, and consumers unable to afford higher liability insurance coverage limits.

**4) The proposed legislation will lead to more litigation, which will burden trial court dockets with cases that should have been settled –**

Since SB 487 will *double* the noneconomic damages caps on subjective damages (damages not easily subject to quantification, like medical damages or lost wages, plaintiff’s will be incentivized to inflate their damages claims and “roll the dice” at trial hoping that the sympathies of a wrongful death case leads to higher noneconomic damages awards. Additionally, by increasing the damages cap *two-fold*, many defendants will have no choice but to legally contest these extremely high plaintiff settlement demands, especially since noneconomic damages

claims, by their very nature, are difficult to prove and quantify, and easily manipulated by rapacious litigants. Consequently, there will be more law suits going to trial, which will congest court trial dockets and delay the adjudication of meritorious legal claims.

NAMIC is also concerned about the provision in the bill that requires the State Court Administrator to annually adjust the cap limit on the noneconomic damages to take into consideration cost of living adjustments. In today's world, most employees don't see an annual cost of living adjustment to their wages and salaries (a true economic variable), so why should there be an annual cost of living increase on the damages cap for pain and suffering (a noneconomic variable)?

Additionally, there is no specific public policy rationale for requiring that the bill become effective upon passage. Increasing noneconomic damages cap for pain and suffering and emotional damages claims for wrongful death cases does not trigger a public policy emergency. Why is an immediate effective date necessary to promote the "preservation of the public peace, and health and safety" of the citizens of the state?

NAMIC is also concerned with the legislative proposal that the increased damages cap be *retroactively* applied to causes of action that arose before the effective date of the legislation. Both plaintiffs and defendants made litigation decisions and created/implemented trial strategies based upon the damages cap law in existence at the time of the filing of the lawsuit. Applying a new damages cap to pending litigation is patently unfair and is likely to have a detrimental impact upon the timely adjudication of cases before the court.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on SB 487**, because the foreseeable adverse societal consequences that will likely result from the proposed legislation far exceed any possible benefits the bill will provide to litigants and their attorneys, who want to inflate the amount of their noneconomic damages settlement demands.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.  
NAMIC – Senior Director of State Affairs  
Western Region



Senator Prozanski and Members of the Senate Judiciary Committee,

Thank you for allowing me the opportunity to submit testimony. I am the Executive Director of OPSO, the Osteopathic Physicians and Surgeons of Oregon, which is a group comprised of over 1,500 osteopathic physicians, residents, and medical students in Oregon who are all dedicated to providing top-level, comprehensive care to Oregon's patients.

OPSO urges your no vote on SB 487. Doubling the cap on noneconomic damages is unnecessary. It will increase medical liability insurance rates, and will ultimately decrease patient access to care.

I'd like to remind the committee that there are no limits on recovering economic damages. Economic damages are fair and predictable, while noneconomic damages are punitive. Noneconomic damage caps exist to ensure that patients and their families are fairly compensated while preserving access to health care.

Many other western states have capped noneconomic damages at \$500,000 or less. California, for instance, has a \$250,000 cap. States with greater noneconomic damages caps have higher medical malpractice premiums. The patients, unfortunately, are the ones who feel the burden of this cost. Additionally, it has been shown that raising malpractice insurance costs is directly correlated with a decrease in rural provider access. Doubling the cap on noneconomic damages is bad for patients.

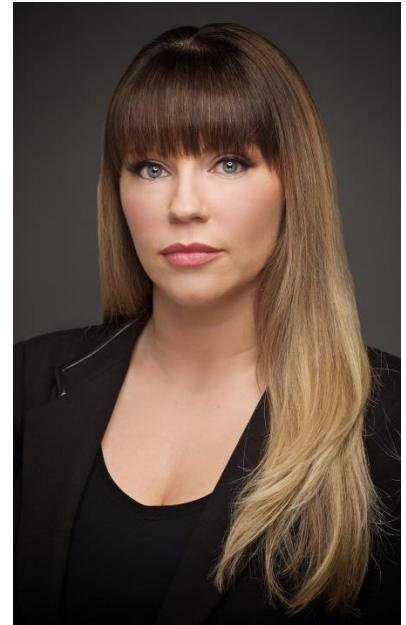
Please protect patient access and oppose SB 487.

Regards,

David Walls  
Executive Director  
Osteopathic Physicians and Surgeons of Oregon (OPSO)

## Brenda Tracy for Restore Justice for Survivors Coalition

In June 1998, Brenda Tracy was a 24-year old single mother of two young boys living near Salem, Oregon. One night, Brenda and her friend Karmen went to a small gathering at Karmen's boyfriend's apartment, which he shared with an Oregon State defensive back. Also in attendance were another OSU football player, a high school recruit, and a junior college player on probation for armed robbery. Although she could not know it at the time, that night would change Brenda's life forever.



Shortly after arriving at the apartment, Brenda was given a small glass of what she was told was gin and orange juice; after just a few sips, Brenda abruptly slipped into unconsciousness. The next thing she knew, she awoke to find a player raping her and others cheering him on. She was drugged and repeatedly raped by four men. The gang rape lasted over six hours, during which Brenda drifted in and out of consciousness, begging them to stop. However, no one stepped in to save her.

It's been almost 20 years since her brutal, life-changing attack, yet Brenda can still remember how she awoke to the smell of dried vomit in her hair and the feeling of the food crumbs that left indentations on her skin as she lay face down on the apartment floor. She felt like a piece of garbage someone tossed away; like an animal, she was branded, never to forget the callous and congratulatory manner of each man as they took turns raping her.

After reporting the gang-rape to the police and enduring an invasive sexual assault examination, Brenda's rapists were booked and charged. Immediately, the college community backlash began: after two weeks being bombarded with open ridicule and death threats, and after being told that successful prosecution was unlikely because the gang-rape was a "he-said-she-said" case, Brenda agreed to drop charges against her attackers.

In hindsight, Brenda wishes she hadn't dropped the charges, but at the time, she "felt dead inside" and simply wanted to slip away. After the charges were dropped, Brenda reported the gang rape to Oregon State University, hoping that the football players who attacked her would at least be held accountable on campus if not by the criminal justice system. Years later, Brenda would learn that the OSU players received only a one-game suspension for the gang-rape. As their coach, Mike Riley, told reporters at the time: "These are really good guys who made a bad choice."

The following years were hard. Like many victims of sexual assault and rape, Brenda contemplated suicide; the rape and the failure of the system to support her sent her into a tailspin of depression and regret. Slowly and deliberately, however, Brenda built herself back up. After 16 years, Brenda finally began to regain her self-worth, end her silence and speak her truth. On November 14, 2014, through an in-depth article by Oregonian reporter John Canzano, Brenda told her story in explicit and heartbreaking detail. She finally exposed her rapists, naming them and insisting on being identified herself. It was her game-changing moment.

Fast forward to today: Brenda is a nationally known and honored advocate combatting violence and sexual assault on campuses across the country. She has found the courage and voice to stand up against deep and long-standing institutional cover-ups of athlete violence on both the collegiate and professional level. She's even had the steel to sit on a panel next to NFL "All-Pro" running back and wife batterer Ray Rice, who was caught on video-camera knocking his wife out cold in a casino elevator.

Brenda knows that without having these difficult conversations and having the courage to stand up to institutions that protect their profits and players over victims, there will never be meaningful change for survivors of sexual assault in America. In Oregon, Brenda is lending her voice, once again, as part of the Restore Justice for Survivors Coalition, to ensure victims of sexual assault and injury have access to justice – the very least they deserve – when big institutions fail to make their safety a priority.

# Jury awards \$750,000 to black worker for racist incidents at Daimler Trucks



By [Aimee Green](#) | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on February 22, 2017 at 4:54 PM, updated February 23, 2017 at 6:13 AM

A Portland jury on Wednesday awarded \$750,000 to a African American worker who said he felt intimidated by racial harassment at Daimler Trucks North America's manufacturing plant, including a noose hung on the production line.

The jury found that Victor Pierce, 59, had been "subjected to a racially hostile work environment" at the company's Western Star manufacturing plant on Swan Island, where Pierce helped assemble heavy duty commercial trucks.

Daimler's attorneys contended that Pierce was exaggerating some of the encounters over the years -- seeing racism where there was none -- and that when racism was involved, the company acted swiftly and effectively to stomp it out.

In 2009, Pierce saw a noose hanging in the cab of a truck moving down the production line. No one was identified as the culprit.

In another instance, a co-worker walked up to Pierce in 2014 and said, "I wish I had a noose!" He was suspended from work for three days.

Pierce testified that he was deeply upset after word quickly spread in 2013 that two white co-workers had confronted an African American colleague with a noose and a proclamation that they would drag him around the parking lot in a truck. The white co-workers weren't fired, according to Pierce's attorneys.

Pierce testified that racist graffiti stayed on the walls of the men's restroom stalls for years. Among that graffiti was a game of hangman with a body drawn in next to "N\_ \_ \_ \_ \_." A swastika also was etched into a stall wall, but it remained visible even after it was eventually painted over.

"The swastika is kind of a metaphor for this case: (Daimler) painted it over, but they didn't get rid of it," said Mark Morrell, a Portland attorney who represented Pierce with attorney Rebecca Cambreleng.

The German-owned company's North American headquarters are in Portland. An estimated 500 to 600 people worked at the Swan Island plant while Pierce was there. Pierce estimated that about 20 of the employees there were African Americans. An independent investigator hired in 2014 by Daimler said it was about three dozen.

After 22 years at the Swan Island plant, Pierce retired in June 2015 at age 58 -- earlier than he had planned, he said, because he wanted to get away from the racism.

As Multnomah County Circuit Judge Karin Immergut read the jury's verdict, tears welled in Pierce's eyes. Moments later, Pierce said that he felt vindicated.

He said he endured many years of racism and the company brushed off his complaints. He spent two years waiting for the outcome of his civil suit.

"We need to change, there's a lot of things that need to change in our society," Pierce said.

## MULTNOMAH COUNTY COURTS

Gang member says killing innocent stranger was 'huge mistake,' will get 17 years

Jury awards \$750,000 to black worker for racist incidents at Daimler Trucks

Mayor Ted Wheeler summoned to jury duty

Woman tells police she killed boyfriend after he arrived late to see child

Ex-NFL player Stanley Wilson II gets 10 days in jail for naked attempted burglary

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He is among at least 12 minority workers from Daimler who have filed lawsuits or settled with the company over complaints of racial harassment in the past several years.

In 2014, after the state stepped in to investigate, Daimler agreed to pay a **record \$2.4 million** to six former employees.

Lawsuits filed by three African American workers are still pending.

Robert Aldisert, and attorney for Daimler, contended that many of the problems that Pierce encountered on the job had nothing to do with racism and that the handful of incidents over 6 1/2 years weren't connected.

"Nobody is trying to say that Daimler is perfect," Aldisert said during closing arguments. "There were issues. There was racially disturbing graffiti in the bathrooms and they dealt with it as quickly as they could."

Aldisert said the company shouldn't be held responsible for a few isolated racially motivated incidents.

In 2012 and 2014, the company held diversity training for its staff. It also posted its strict anti-harassment policy.

But Pierce's attorneys contended those steps were too little, too late.

The trial lasted six days. The jury deliberated for less than four hours.

Ronderrick Moore was the only African American juror. He told The Oregonian/OregonLive that hearing what Pierce had experienced on the job was so troubling to him that he couldn't sleep well at night.

He wanted to award Pierce more than \$1 million, but said he was satisfied that the verdict sent a message to Daimler of "how outraged we are."

"This case right here put my faith back into the system," Moore said.

Juror Lauren Clark said it was easy to understand how Pierce felt intimidated in the workplace.

"It's encouraging that a number of lawsuits are being brought against the company," Clark said.

After the verdict, Daimler spokesman David Giroux said the company was disappointed but "respects the judicial process and will consider its options."

The company "is an Equal Opportunity Employer with a zero tolerance policy related to discrimination or harassment on any basis," Giroux wrote, in a statement.

The company's policies call for a harassment-free work environment and prohibits discrimination "based on characteristics protected by law such as race, color, gender, religion, national origin, age, marital status, family relationship, disability, sexual orientation, or veteran status," Giroux wrote.

-- Aimee Green

**agreen@oregonian.com**

**o\_aimee**

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*Jon Anderson - CBS special report on Boy Scout abuse – October 2012*

Jon Anderson is a 54-year-old father of three and a dedicated research chemist at Intel for over 20 years. He is also a survivor of childhood sexual abuse at the hands of his trusted Boy Scout troop leader while attending Whittaker Middle School in NE Portland. He is one of far too many people who suffered in shame and silence, while decade after decade, an array of authorities quietly shielded scoutmasters and others accused of molesting children. Without a fair jury system with access to justice, powerful organizations go unchecked, protecting themselves and putting vulnerable people at risk. Civil cases like Anderson's have forced organizations to make systemic changes to stop sweeping predators under the carpet at the expense of children whose lives are forever changed. The Horton decision threatens to upend access to justice for survivors like him and all Oregonians whose lives have been forever changed through the actions of others.

### **Jon's story**

Proof of the Scout's institutional knowledge of the abuse was discovered in a trove of "confidential" papers released in 2012 by order of the Oregon Supreme Court. These "perversion files" detailed how the Scouts maneuvered to allow sexual predators to go free while victims suffered in silence. The 1,200 documents describe actual or suspected sexual abuse by volunteers or troop leaders from 1965 to 1985. But as Anderson experienced, rather than prosecuting the abusers, they simply moved the predators along to new troops, to molest new victims. The Scout authorities justified their actions as necessary to protect the good name and good works of Scouting, a pillar of 20th century America.

In Jon's case, his abuser, Steve Terry Hill, was a known problem in San Diego, so the Scouts moved him to Portland, Oregon. Hill abused 11 Portland boys in the mid-70's and was never arrested until charged with arson in 1977, trying to burn down the house of his then girlfriend. Next, Hill started a driving school and adventure club so he could attract new victims. In 1979, the Scouts sued Hill in order to prevent him from portraying his adventure club as associated with the Scouts, but it wasn't until 1988 that the Scouts opened an "ineligible volunteer" file on Hill -- meaning he was officially no longer allowed to work with Scouts. Hill was finally convicted in 1991 of sexually abusing youth picked up in another capacity. He served about 20 years in prison and was released in April 2011. He is reported to still reside in Portland.

Like so many victims of childhood sexual abuse, Jon suppressed his trauma until 2011, when his memories were triggered during a conversation with an old friend and fellow Scout who disclosed he had been abused by Hill. It all came rushing back. His civil lawsuit against the Scouts helped to hold the organization accountable for the abuse, the cover-up, and the impact on the victims and our community. The cumulative impact of suits like Jon's helps change the behavior of big institutions in our society.

Jon continues to work with a therapist today. And even with ample access to support and a loving family, this intelligent, well-spoken, gregarious man tried to take his own life, just a year ago, despite his unwavering love for his beautiful daughters. The "monster" still haunts him, even as he works through his traumatic memories and bravely takes a stand for all other victims of abuse.

## Max Woodbury for Restore Justice for Survivors Coalition

Twenty years ago, Max Woodbury was a field geologist right out of college stationed at an environmental cleanup site installing a water pipe for a vehicle decontamination pad. A portion of the pipe installation occurred above an underground walkway and required an elevated work platform in order to perform the task. While dismantling the platform and pulling a sheet of plywood, he fell from 11 feet up, onto his head and into the underground workwell below. Because he was wearing a construction hard hat, the force from the fall went straight to his neck, shattering the third through the seventh vertebrae in his cervical spine rendering him a C-6 quadriplegic with no function or sensation below his shoulders.



Under Oregon's workplace safety rules, employers and contractors, such as this general contractor, involved in high risk occupations have a responsibility to take whatever means necessary to ensure their workers' safety including providing a harness system or rail/scaffolding fall protection system to insulate workers from such falls.

This general contractor cut corners and didn't provide these basic safety measures or safety training for its workers.

When Max arrived at the trauma center, the instant swelling from his broken bones created a feeling that his legs and arms were floating. He was told by the doctors the feeling would dissipate and he would never walk again or be able to use the restroom naturally. His spinal cord injury affects his parasympathetic nervous system, meaning he can't regulate temperature in his body. He can't naturally perspire when it's warm and is susceptible to heat stroke. When it's cold, it takes an excruciating long time for him to warm up. Max no longer has a working trunk or abdominal muscles so he can't sneeze or cough with any force, leaving him highly susceptible to pneumonia.

His life was turned upside down because of the carelessness of the general contractor. With all of the changes his injury created, he had to relearn every aspect of his life, big and small. Activities like flossing his teeth and feeding himself took months before he figured out a workable method. Even after all this time, his morning routine typically takes three to four hours to complete just to begin his work day. He has caregivers to assist in his morning routine so he can focus his energies on the rest of his day. He works half-time in an office environment. Gone are the days of being out in the field.

Max is now 44 years old, is married and a father of three children. When hearing about the Horton decision, Max was outraged that this decision put an arbitrary, one size fits all cap on justice and would have a profoundly negative effect on other injured workers.



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## **AARP Oregon Testimony on SB 487**

February 16, 2017

TO: Senate Committee on Judiciary, Sen. Prozanski, Chair

FROM: Jon Bartholomew, Government Relations Director, AARP Oregon

AARP Oregon supports Senate Bill 487, because it will provide seniors who have been abused or neglected and other injured Oregonians the access to a jury trial based on the facts of their case. Seniors can fall victim to many predatory practices because as people age, they become less likely to be able to defend themselves from abuse and neglect.

The effects that abuse can have on seniors are devastating. The damage can be physical and emotional. The ability to physically perform daily activities of daily living can be impaired, and their sense of safety can be destroyed. The trauma that elder abuse has on families is enormous. Senate Bill 487 will give them a chance to have their case heard by a jury and let that panel of twelve ordinary Oregonians determine what fair compensation is for the pain that will change a family forever.

Damages for pain and suffering are often the only compensation a retiree can receive. For instance, a retired person has no lost wages to be compensated and so would be eligible for minimal compensation for economic loss.

AARP has a long history of working on this issue. We opposed Measure 81 in 2000, which would have re-imposed compensation caps for severely injured or abused Oregonians. Voters agreed by a 70-30 margin that juries should have the power to make these decisions. Voters spoke again on this issue by defeating Measure 35 in 2004. Since 1999, the system worked well, and SB 487 simply restores this system of justice for severely injured or traumatized Oregonians.

SB 487 allows for a severely abused senior to get the access to justice they deserve. AARP Oregon urges you to support SB 487.

AARP  
Real Possibilities



Senator Prozanski and Members of the Senate Judiciary Committee,

Thank you for allowing me the opportunity to submit testimony. I the President-elect of the Oregon Society of Anesthesiologists (OSA), which is a group comprised of over 600 physicians who are working to uphold the highest standards of anesthesia care and patient advocacy by promoting patient safety, research, education, and innovation in anesthesia.

The Oregon Society of Anesthesiologists urge your no vote on SB 487, which would unnecessarily double the cap on noneconomic damages. Already, there are no limits on economic damages, which are objective and fair. Increasing the cap on punitive, noneconomic damages will not help patients and their families. Instead, it will raise medical costs and diminish access to healthcare for all, especially those in rural areas where access is already a problem.

It was not so long ago that Oregon experienced a crisis in availability of OB-GYNs due to prohibitive malpractice insurance rates. Raising the cap on noneconomic damages will raise liability insurance rates for all types of physicians, which will ultimately raise costs for patients.

Many neighboring states understand this balance, and have capped noneconomic damages at \$500,000 or less. For instance, California's caps its noneconomic damages at \$250,000. States with higher noneconomic damages caps, such as Tennessee, have much higher medical malpractice insurance premiums. There is evidence that a rise in malpractice premiums directly results in a decrease in rural physicians, and a two-fold decrease in older rural physicians.<sup>1</sup> Raising the noneconomic damages cap will disproportionately affect rural patients' access to physician-led care.

Please vote no on SB 487, and keep health care costs reasonable in our state.

Regards,

Kate Ropp  
President-elect  
Oregon Society of Anesthesiologists

1: Baicker, Katherine, and Amitabh Chandra. "The Effect Of Malpractice On The Delivery Of Health Care," Forum for Health Economics and Policy, 2005, v8, Article 4, (Berkeley Electronic Press)



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Oregon Chapter, American College of Emergency Physicians (O.C.E.P)

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## **OR-ACEP Statement on SB 487 Medical Liability**

The Oregon Chapter of the American College of Emergency Physicians (OR-ACEP) opposes SB 487, which eliminates the constitutional \$500,000 limit on noneconomic damages recoverable in civil jury lawsuits and doubles the cap for wrongful death lawsuits. The costs of defensive medicine are driving up the price of health care for everyone and harming patients in the process. The lack of medical liability limits is directly linked to workforce shortages in medicine, especially among specialists needed to see patients in the emergency department.

### **The medical liability crisis affects patients**

States with challenging medical liability climates have a much harder time attracting and retaining an adequate physician workforce. Patients face physician shortages, delays in care and increased costs as a result.

The most dangerous consequences are delays in medical care caused by physician shortages. Many on-call physicians will neither care for emergency patients nor perform high-risk procedures out of fear of lawsuits. This may result in some patients not having access to specialists, such as neurosurgeons, orthopedists and hand surgeons. The shortage of specialists willing to take call in the emergency department leads to dangerous delays in care.

### **The medical liability crisis affects what happens in emergency departments**

Emergency departments care for the most severely ill and injured patients who are at greatest risk of dying. Therefore, emergency physicians can't afford to miss any symptom or condition that may pose a health risk. They are required by law to treat anyone who comes through the door, regardless of insurance status or ability to pay. Very often they are working with little or no knowledge of the patient's history. Lacking liability protections, emergency physicians are more likely to order extensive tests in order to rule out absolutely every life-threatening condition.

This isn't just an Oregon problem. An poll conducted by the American College of Emergency Physicians in 2011 showed that nationally 44 percent of emergency physicians consider the lack of liability protection the single biggest obstacle to cutting costs in the emergency department. The same poll showed that more than half (53 percent) of emergency physicians order the number of tests they do because they fear being sued. The costs of defensive medicine are paid by all Americans through higher premiums for health insurance and higher out-of-pocket payments for care.

OR-ACEP urges a 'no' vote on SB 487.