

May 24, 2017

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

From: James T. Dorigan, Jr., CPCU, ARM, ARe, RPLU
Senior Vice President, Regional Operating Officer
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RE: HB 2807 – Oppose -A4, -A5 and -A7 amendments
Indexes \$500,000 limit on non-economic damages in wrongful death actions, and
increases \$500,000 limit on non-economic damages in bodily injury cases to either
\$10,000,000 or \$15,000,000 adding an annual inflator.

Chairman Prozanski, and Members of the Senate Judiciary Committee; thank you for allowing me to testify today. My name is Jim Dorigan. I am the Regional Operating Officer for The Doctors Company (TDC), a physician owned company that is owned by its insured members. TDC insures over 2600 Oregon physicians, nurse practitioners, physician assistants, registered nurses and other health care providers. I have been engaged in insuring Oregon healthcare providers since 1983.

The proposed amendments to HB 2807 index the cap on non-economic damages for wrongful death and increases the limit for bodily injury cases to \$10,000,000 or \$15,000,000 and adds an annual inflator. **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 and potential earnings, all future medical care, and the cost of replacing services are recoverable without any limitation and includes cost of living adjustments. The current \$500,000 non-economic damage cap provides a reasonable and fair amount for non-economic damages such as 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)
- Insurance premiums for healthcare professional have been flat for over 5 years in Oregon and liability costs have been one of the few controlled costs in healthcare. Increasing the liability of healthcare professionals will have an immediate impact on cost, availability and affordability of healthcare.
- Access to healthcare is critical for vulnerable underserved populations statewide and in rural Oregon. Access to specialized care in the high risk specialties is important for all of Oregon's patients. 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.



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- High risk, high premium specialties will feel the greatest impact. Over 50% of Oregon deliveries are covered by Medicaid. As liability costs rise, Obstetricians and other providers' ability to service the Medicaid population will be adversely impacted. Providers who provide needed care to the underserved population in Oregon will be least able to afford the increased liability cost.
- The medical professional liability market in Oregon is approximately \$90,000,000. Based on actuarial analysis, it is a reasonable assumption that costs would increase by 20% or more in the near future which would need to be funded by the healthcare system.
- 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.
- This bill is retroactive which means that all pending bodily injury cases will not be subject to the non-economic damage cap. This will greatly increase the cost of bodily injury cases and make settlement of cases more expensive and difficult. Purchased insurance limits and the assets of individuals and companies will be inadequate to address the added **expense** of resolving these cases.
- 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. The proposed legislation increases the potential exposure on these 89 of these cases and all future cases. Assuming that 20% of these cases are cases of liability, for those cases the potential exposure increases by \$169,100,000 (17.8 x \$9,500,00). Two of those cases with verdicts or settlements at the proposed cap of \$10,000,000 would exceed the annual premium collected by TDC representing 40% of Oregon 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 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 cost to Oregon of subsidizing rural physicians will increase.
- 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.

- 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, the average amount paid to resolve claims, has risen annually from 4% to 6%.
- The cost of defending all claims has been rising dramatically in recent years, including the cases where no negligence has been found. If enacted, this legislation will likely increase the frequency of marginal claims, driving costs up for health care providers.
- Increasing 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 Affordable Care Act and Medicaid funding 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.

I urge you to please vote NO on the proposed -A4, -A5, and -A7 amendments to HB 2807 to preserve and promote access to health care for all Oregonians. Oregon's cap on non-economic damages ensures that injured patients receive fair compensation while preserving access to healthcare by controlling costs for doctors, nurses and healthcare providers and helping them serve Oregon's most vulnerable citizens.