



**MEMORANDUM**

**To:** Sen. Floyd Prozanski, Chair, Senate Judiciary Committee  
Vice-Chair Sen. Kim Thatcher, Vice-Chair, Senate Judiciary Committee  
Members of the Senate Judiciary Committee

**From:** Bryan Boehringer, OMA Executive Vice President

**Date:** May 24, 2017

**Re:** HB 2807

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Thank you for the opportunity to testify today. My name is Bryan Boehringer and I am the Executive Vice President of the Oregon Medical Association.

While the OMA opposes HB 2807, as proposed to be amended, 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. The amendments to HB 2807 seek to disregard and change that roadmap. The bill would raise an existing legislative cap on non-economic damages in injury cases from \$500,000 to \$10,000,000. We believe that HB 2807, if passed as amended, 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.

**Raising the non-economic damages cap by 1900% will increase medical liability costs**

The amendments to HB 2807 raise the cap on non-economic damages so significantly as to render its effect useless.

Many physicians understand firsthand what adverse events in health care mean to a patient or the family of a patient and believe that the remedy of both economic and non-economic damages should be available in injury and wrongful death cases. Oregon does not cap economic damages and has maintained a cap on non-economic damages in injury and 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.

A ten-million-dollar 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, reduce patient care hours, or eliminate higher risk services entirely 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 such a significant increase in a cap for non-economic damages.

### **Raising the damage cap in injury cases by 1900% will lead to increased health care costs**

HB 2807's amendments seek to create \$10,000,000 in potential liability exposure 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.

Further, physicians recently have become subject to a new form of liability created by the Oregon Supreme Court this year that allows plaintiffs to recover damages for a lost chance at a better outcome. In loss of chance cases, even if the physician did not directly cause the injury, the physician could be sued for contributing to a percentage loss associated with a different course of treatment. These likely will be complex cases and likely will lead to recovery of non-economic damages due to the challenges in defining the economic damages of a lost chance. Without a reasonable cap on non-economic damages, physicians in Oregon are exposed to even greater liability if the Legislature compounds the exposure for them.

## **Raising the non-economic damages cap by 1900% to \$10,000,000 will hurt health care access**

HB 2807's amendments are 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. HB 2807 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.

A ten-million-dollar 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 proposed amendments to HB 2807 that would raise the cap on non-economic damages in injury cases to \$10,000,000. 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).