



Testimony on Health Care
June 1, 2020
Senate Interim Committee on Business & Labor
Thomas Doyle, JD

Chair Taylor, Vice Chair Knopp and Honorable Members of the Committee.

I am Thomas Doyle, General Counsel for the Oregon Nurses Association. Prior to joining ONA this past March, I have been a partner in the Portland Law firm of Bennett Hartman. I have represented employees, and primarily health care and public employees, for twenty-five years. You have asked for testimony on the effect of COVID-19 on Oregon workers. I am here to speak on the effect on Oregon nurses. I appreciate the opportunity to present testimony today. I have three points to make:

1. **There is still inadequate Personal Protective Equipment (PPE).** Yet we are reopening the doors to patients to ensure the financial success of health care employers. This places nurses' lives at risk.
2. **The rules for protecting nurses and patients during reopening have no effective mean of enforcement.** The staffing law has been eviscerated and OSHA oversight is inadequate;
3. **These front-line workers should not have to prove that when they do get COVID-19, that it was because of their job.** The worker's compensation system should be there as a reliable safety net for nurses. Whether it is shielding employers from liability or reducing minimum wages, lessening the protections for workers in this state is exactly the wrong response to this crisis.

A. Inadequate PPE

There is still inadequate PPE, yet we are opening the flood gates of patients. You and the citizens of this state are asking health care worker to bear the brunt of the reopening still without adequate protective equipment. Let us be clear that this is in fact balancing job creation against health care workers lives. If we are asking them to suffer the casualties as part of the reopening, the very least that can be done is to give them the equipment they need to do the job as safely as possible.

For instance, I spoke with a nurse last week who still has the ONE mask she was given in March. Five months ago, it would have been unheard of to use anything other than a new N-95 mask with infectious patients. Now nurses I speak with are told that masks worn each day, all day, for five days straight are "safe enough." I spoke on Friday with a Providence Home Health nurse wearing a DIY face shield, telling me that those nurses have just a three-day supply of surgical masks for their entire unit and just 28 N-95 masks for 120 nurses. Nevertheless, we are reopening throughout the State to increase patient volumes. This is not an evidenced based



decision, or a question of crisis care necessary to serve patients in need. Instead it is an economic decision.¹ However, the economic imperative of increasing Hospital revenue cannot come at the expense of any nurse's life. A state of crisis cannot be the new normal. Safe enough is not good enough for Oregon nurses.

B. The Governor's Reopening Have No Effective Means of Enforcement.

ONA was an early advocate for the Governor's Stay at Home orders. ONA was granted Amicus status in the recent Baker County litigation and filed in support of the Governor's authority to issue those orders. Yet, we are deeply concerned that as the Governor allows reopening through carefully crafted standards, holding hospitals to those standards is no one's job. I have facilitated or filed numerous OSHA complaints regarding PPE and have reviewed OSHA investigations of other' PPE complaints. They all follow the same course – complaint is filed, letter goes to employer, employer says they are complying the CDC and OHA standards and investigation is closed. This is not adequate investigation – OSHA has neither the expertise or resources to determine if there is adequate PPE for health care workers in this context. Yet, we have been told that OSHA is the one responsible for enforcing those reopening criteria.

Similarly, with the issuance of the State of Emergency, the staffing law that ensures that patients have adequate levels of nurse staffing a has become an opt out program. Hospitals simply have to implement a facility disaster plan and they are no longer bound by the requirements. As a result, we see employer's maximizing nurse/patient ratios – thus having a nurse be responsible for as many patients as possible, well beyond what is allowed under the staffing plan. If this was because of a surge of patients, that would be understandable – that would fit under the reason why these plans are suspended during a state of emergency. Yet, at the same time, employers are sending other nurses home without pay to save money. They are able to cut these costs by taking advantage of the COVID-19 crisis to alter staffing for financial reasons. This should not be allowed, yet OHA is powerless to do anything about it.

C. The Workers Comp System Should Support Front Line Health Care Workers

Finally, front-line workers should not have to prove that when they do get COVID-19, that it was because of their job. It defies common sense to make someone whose job it is to help COVID-19 patients prove that they contracted COVID from those patients – for nurse and other front-line employees it should be presumed. While limitations on liability may make sense in certain circumstances for providers as to patient care, (which largely already occurs under common law's consideration of the state of emergency's effect on the standard of care) it should not extend to

¹ When it comes to "adequate" PPE – the devil is in the details. Hospitals are using utilization rates based on crisis standards to prove that they have enough PPE on hand to justify reopening. Nurses are still being told that procedural masks are appropriate for COVID patients. They are being told that extended use – i.e. same mask for entire day **and** reuse of that same mask for five or more days – is appropriate and safe enough. There is no science to support that this crisis use of masks protects the wearer.



protect employers from claims from employees. Employer's must be held responsible for providing nurses a safe workplace – nothing the legislature does should reduce that obligation.

In conclusion, Oregon nurses are being sent into the breach, without adequate PPE, without any means of making sure their employers comply with the Governor's order and then are being denied worker's comp coverage when they contract COVID. We are asking nurses to be the front line. However, we are sending them ill equipped both in terms of PPE and without the tools for holding their employer's accountable. The legislature can and should support Oregon nurses during this State of Emergency.