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Testimony of Arthur Towers  
In Regard to Senate Bill 60  
Before the  
Senate Committee on Human Services  
January 23, 2019

Thank you for the opportunity to testify on SB 60. This bill adds acupuncturists to the list of ten other types of clinicians who are exempt from responsibility for their negligence if they are performing their services without compensation. The -1 amendment appears to add podiatrists to this list. The immunity for the clinician applies if the patient has signed away her Constitutional right to ask a court or a jury to find a clinician negligent, and to right to be compensated for damages caused.

Since the state has adopted the policy that clinicians are exempt from liability under these circumstances, treating acupuncturists similarly would be a logical extension. Our purpose in testifying today is neither to single out acupuncturists nor to fight tooth and nail (or foot and needle) over this legislation.

Instead I write to you to observe that this is another erosion of Oregonians' 7<sup>th</sup> Amendment right to a trial by jury. **We don't agree that everyone who believes they have been harmed by a clinician deserves to be compensated. But we do believe strongly in the 7<sup>th</sup> Amendment Constitutional right to be heard by a jury of your peers.** In this example, there may be a set of circumstances in which the patient could not provide the informed consent needed for the immunity to apply, even though she signed a form. Consider a medical office in which three clinicians work, and all follow the same negligent practice. The patients harmed by the ones who get paid would have their rights protected, but the one harmed by the clinician who comes out of retirement once a month to work for free would have their rights abridged. The patient who can only afford the free service would be more vulnerable than the patients whose insurance cover the acupuncturist.

Would this example be the exception, not the rule? Probably. That said, the state should be vigilant about protecting the Constitutional rights of the minority. This bill, on the margins, does the opposite.

The legislature cannot foresee every set of circumstances. A court of law however, gets to hear the particular facts of an individual outlier set of circumstances, listen to both sides and make a fair decision based on those facts. The philosophy embodied in the statute that is being amended is an example of government overreach. A legislative body far removed from a nuanced situation in which an individual is grievously harmed is armed with a nuclear weapon while a local jury is armed with a scalpel.