OREGON MEDICAL ASSOCIATION

MEMORANDUM

To: Senator Floyd Prozanski, Chair, Senate Committee on Judiciary
Senator Kim Thatcher, Vice-Chair, Senate Committee on Judiciary
Members of the Senate Committee on Judiciary

From: Bryan Boehringer, Executive Vice President

Date: May 6, 2019

Re: HB 2014 - Opposition to Elimination of Non-Economic Damages Cap

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Many of our members understand firsthand the impact these cases have on the patient and their families and believe that the remedy of both economic and non-economic damages should be available in an injury case. We continue to support Oregon's cap on non-economic damages, as the cap has been upheld as constitutional under our state constitution, and alongside unlimited economic damages the cap reasonably meets the needs of the injured party while providing the necessary predictability to maintain stable insurance environments for providers. We would not support any legislation that removed the ability to recover proven economic damages, which are unlimited, as well as reasonably limited non-economic damages.

The OMA opposes removing this cap because it will likely disrupt the insurance market, impacting rates and driving up the cost of health care, resulting in decreased access to care, often times to the most vulnerable populations. Removing or raising the non-economic cap could allow for increased awards and cause the cost of liability insurance to rise to meet the increased risk. This higher cost is, in turn, passed on to providers in the form of increased insurance premiums, which may become unaffordable and out of reach for the provider. Oregon's safety-net providers serve thousands of patients, the majority of whom are women and children. Community clinics are unable to shift higher insurance costs to their patients - which means less funds available for patient care. The cap, as it exists today under Oregon law, provides needed stability in the existing medical liability system and ensures the cost of liability insurance for our health care professionals does not skyrocket.

Removing the cap further jeopardizes our already strained health care system in rural Oregon through increased costs, including further straining the state funded Rural Medical Liability Reimbursement Program. This program ensures Oregonians have access to the broadest possible range of specialty physicians by incentivizing rural medical practice. History has shown us that high 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 OB/GYNs, pediatricians and neurologists, are forced

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to leave practice because the costs of insurance combined with overhead make operating a rural practice unsustainable. This means that rural Oregonians, who need this high risk specialty care, find themselves without access to this care and must then either forgo care and risk their health or seek services miles away from their home. Removing the cap could result in the unintended consequence of increased costs to the state to ensure that the rural liability reimbursement program remains viable and that rural Oregonians continue to have access to their health care providers where they live.

Removing the non-economic cap would make Oregon an outlier among its neighboring Western states, where the majority of states have a non-economic damages cap that is either equal to or lower than Oregon's current cap. In fact, the state of California limits non-economic damages in medical liability cases to $250,000, a level that was just reaffirmed by the voters in 2014.

Our current cap is in line with surrounding states, which allows Oregon's liability carriers to offer comparable coverage rates that make Oregon competitive and assists in retaining and recruiting new providers to Oregon. Based on available data from The Doctor's Company, the difference in provider premiums with a state that has a cap (Oregon) and one that does not (Washington), can be up to $18,000 per year. As indicated previously, we know that one of the specialties most affected by any liability coverage premium increase is obstetrics and gynecology, and a premium increase in the range of almost $20,000 could leave rural Oregon without any OB/GYNs. If Oregon removes the non-economic cap, we fully expect that both new graduates and existing providers will look to join their colleagues in states outside of our borders, thus negatively impacting Oregon's patients.

Further, the OMA would encourage the committee to consider the potential impact of the Early Discussion and Resolution (EDR) program on the medical liability system as a whole. Launched in July 2014, the program's goal is to allow the patient (or the patient's representative) and their healthcare facility or provider to come to a shared understanding about what led to a serious injury or death and can allow all the parties to come to a resolution. We believe the program can be beneficial and improve our medical liability system, but it needs our collective support.

For the reasons above, the OMA respectfully opposes removing or increasing the cap on non-economic damages.

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