

OREGON TRIAL LAWYERS ASSOCIATION

812 SW Washington Street, #900

Portland, OR 97205

www.oregontriallawyers.org

503-799-1017

Testimony of Arthur Towers
In Opposition to LC 29
Before the
Joint Interim Committee on the Third Special Session of 2020
December 19, 2020

Co-Chairs Kotek and Courtney and members of the committee, thank you for the opportunity to testify this morning. The Oregon Trial Lawyers Association philosophically opposes limits on Oregonians' 7th Amendment right to trial by jury as described in LC 29. The immunity proposals under consideration place an additional barrier to the fundamental Constitutional right to a trial by jury. Suits would be allowed to be filed, but the opportunity for injured Oregonians to make their case to a jury would be meaningfully limited.

The proponents have failed to demonstrate that the legislation is needed. Ten months into the pandemic and we have yet to see a lawsuit that would be impacted by these proposals. The medical industry has treated tens of thousands of Oregon Covid victims, postponed procedures for thousands of others yet there is nary a lawsuit that proponents can point to as a problem.

If the threat of litigation is pushing proponents to operate in a safer manner, then the 7th Amendment is operating as the framers of the Constitution intended. Liability provides an incentive for keeping people safe. Passage of this legislation limits that incentive.

A lot of work has gone into LC 29, reflecting eight months of good-faith negotiations. The conversation would have more robust and the policy would have been improved with the inclusion of nurses and other front-line workers, disability rights advocates, and advocates for Oregonians who face the systemic racism and discrimination in our health care delivery system.

However, as a result of these lengthy negotiations, the LC creates a dispute resolution process that cushions the blow to victims' 7th Amendment rights.

LC 29 affects Covid-related complaints and complaints brought by people denied care during the Covid-related emergency. After the victim files suit, the defendant would have the opportunity to file an affidavit with a judge at the onset of the case showing they were in compliance with Covid-related guidelines and that compliance with the guidelines led to the alleged harm.

If a victim could not show that there is a material dispute of fact that the defendant was out of compliance, the case would be dismissed. The proponents seek a quick resolution of claims and this process provides speedy resolution – but only if they can demonstrate compliance with guidelines. **We respect that – unlike the proposal that died in committee in the First Special Session – this is a significantly more measured approach.**

If this proposal becomes law, there is greater urgency in guarding against any attempt to weaken Covid guidelines and rules. Thanks to community pressure, the state has already made significant efforts to improve crisis care guidelines for the medical industry.

Due to scrivener's errors, there are a handful of problems with LC 29 that need to be resolved. Most notably:

- The list of health care facilities in Section 1(3)(a) needs to be pared back solely to hospitals. For example, 1(3)(a)(F) mental health treatment facilities are completely undefined. ORS 430.335, referred to in 1(3)(a)(I), provides an extremely vague definition of who might receive grant funding for services provided. The same holds true for the grant recipients described in 430.620.
- The language on page 4, Section 2(2)(f) needs to be tightened up to protect the rights of victims whose medical procedures were inappropriately delayed during the pandemic. OMA and OAHHS have agreed to suitable language that is not reflected in LC 29.
- Whistleblower protection needs to be improved. If everyone is aware that every worker has the freedom and power to speak up for patients regardless of their status in the hospital, the temptation to cut corners will be reduced and Oregonians will be safer.

I want to express appreciation to Legislative Council and committee staff for all their hard work on this.