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Testimony of Arthur Towers

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In Regard to Senate Bill 780, -1 Amendment

Before the Senate Committee on Judiciary and Measure 110 Implementation

March 23, 2021

Chair Prozanski, Vice Chair Thatcher, members of the Committee, thank you for the opportunity to submit testimony on this bill. OTLA is neutral on this amendment.

This proposed amendment allows certain medical providers to become eligible for immunity from responsibility if they harm patients while complying with Covid-related protocols.

We don't see the need for this legislation. Our research indicates there are no Covid-related claims in Oregon that would be affected by the bill, nor are their claims elsewhere in the country that would fit the criteria for this legislation.

However, if the legislature determines that such a bill is needed, this approach is narrowly tailored to protect victims' rights to a certain degree.

What Does the Amendment Do?

The amendment adds a step to the legal process. If a victim is harmed by a Covid-related medical procedure, or by the failure to receive treatment during the Covid emergency, then the medical provider could file legal paperwork early in the process demonstrating that they have complied with Covid-19 guidelines. The victim would then file a competing affidavit explaining why the medical provider is not in compliance. The judge would decide to end a case if there is no issue of material fact that the medical provider was in good standing. If there was a legitimate dispute over whether not there was compliance, the case would proceed.

It is important to understand who is and is not covered by the bill because this was a source of considerable controversy during the 11 months of negotiation. Long-term care facilities are never eligible for immunity, nor are prisons, nor are other facilities listed on page 2 lines 18-23 of the -1 amendment [Section 1(5)(b)].

Certain medical providers (listed on page 2 line 24 through page 3 line 1) are eligible to seek immunity. However, they are not immune for their actions if they place in long-term care, prisons or the other Section 1(5)(b) facilities.

Hospitals and HMOs are eligible to seek immunity. **Other facilities (but not the Section 1(5)(b) facilities) are eligible to seek immunity only if the suit filed against them is related to an action or decision made by a medical provider.** To provide an example, a doctor determines that, in order to comply with Covid guidelines, she has to shut down a dialysis unit. A patient suffers harm as a result of that decision. Both the dialysis facility and the doctor are eligible to seek immunity. If the director of the facility determines it will be too costly to comply with covid guidelines, and shuts down the facility, denying people treatment; then the facility is ineligible for immunity.

This amendment is not perfect. More could have been done to enhance the rights of victims of health care that had a discriminatory impact. More could be done to protect whistleblowers. The amendment does limit the 7th Amendment right to a jury trial.

One final point: there should be additional facilities that should never be eligible for immunity from liability. These are facilities as described in:

- 169.005 (3) juvenile detention facilities
- 169.005 (4) local correctional facilities
- 169.005 (5) lockups
- 169.620 regional correctional facilities
- 420.005 (4) youth correction facilities

Facilities that have 24/7 custody of Oregonians should never have relaxed responsibility for the health of those in their care.