

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CIVIL LAW**

**February 2, 2005 Hearing Room 357**

**8:30 A.M. Tapes 10 – 11**

**(Corrected 5-5-05)**

**MEMBERS PRESENT: Rep. Robert Ackerman, Chair**

**Rep. Linda Flores**

**Rep. Bill Garrard**

**MEMBER ABSENT: Rep. Kelley Wirth**

**STAFF PRESENT: Sam Sears, Counsel**

**Louann Rahmig, Committee Assistant**

**MEASURES/ISSUES HEARD & WITNESSES:**

**HB 2275 Public Hearing and Work Session**

**Wendy Johnson, Oregon Law Commission**

**Shani Fuller, Department of Justice (DOJ)**

**HB 2283 Public Hearing**

**Gary Harrell, Oregon State Bar (OSB)**

**Patrick Braatz, Oregon Board of Dentistry**

**Dave McTeague, Oregon Board of Chiropractic Examiners**

**Christine Chute, DOJ**

**Kathleen Haley, Oregon Board of Medical Examiners**

**Martin Pittioni, Board of Psychologist Examiners**

## **HB 2285 Public Hearing**

**Gary Harrell, OSB**

**Philip Schradle, DOJ**

**Cory Streisinger, Department of Consumer and Business Services**

**Marcia Ohlemiller, Bureau of Labor and Industries**

**Patty Glenn, Oregon Board of Massage Therapists**

**Scott Taylor, Oregon Real Estate Commissioner**

**Kathleen Haley, Oregon Board of Medical Examiners**

**Martin Pittioni, Board of Psychologist Examiners**

**Patrick Braatz, Oregon Board of Dentistry**

**Dave McTeague, Oregon Board of Chiropractic Examiners**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 10, A</b>		
004	Chair Ackerman	Calls the meeting to order at 8:38 a.m. Announces that HB 2285 will have a public hearing only. Explains meeting protocols. Opens the public hearing on HB 2275.

### **HB 2275 - PUBLIC HEARING**

017	Chair Ackerman	Asks counsel to review HB 2275.
026	Bill Taylor	Counsel. Explains HB 2275, which clarifies that a later-issued child support judgment supersedes an earlier-issued child support order under certain circumstances. States that HB 2275 is a follow-up to HB 2645 and HB 2277 from the 2003 session.
029	Wendy Johnson	

Deputy Director, Oregon Law Commission. Gives an overview of the Law Commission, which was created in 1997. Submits testimony and testifies in support of HB 2275 (**EXHIBIT A**).

063 Shani Fuller Oregon Child Support Program, DOJ. Submits testimony and testifies in support of HB 2275 (**EXHIBIT B**).

119 Chair Ackerman Closes the public hearing and opens a work session on HB 2275.

### **HB 2275 – WORK SESSION**

128 Rep. Garrard **MOTION: Moves HB 2275 to the full committee with a DO PASS recommendation.**

**VOTE: 3-0-1**

**AYE: In a roll call vote, all members present vote Aye.**

**ABSENT: 1 - Wirth**

135 Chair Ackerman **The motion CARRIES.**

**REP. ACKERMAN will lead discussion in the full committee.**

136 Chair Ackerman Closes the work session on HB 2275 and opens the public hearing on HB 2283, which prohibits agency from requiring that licensee take mental or physical examination unless agency has adopted certain rules governing examinations.

### **HB 2283 – PUBLIC HEARING**

142 Gary Harrell Administrative Law Section, OSB. Submits testimony and testifies in support of HB 2283 (**EXHIBIT C**).

185 Harrell Continues testimony that some agencies have abused the process and cites examples.

254 Chair Ackerman Indicates there is nothing in HB 2283 requiring agency finding of just cause before ordering a physical or mental examination. Asks how that requirement is fulfilled.

259 Harrell

Responds that Section 2(3) of HB 2283 brings in the body of law relating to contested case hearings, and those orders must have findings of fact and conclusions of law.

- 265 Chair Ackerman Asks if that is complicit within the contested case process.
- 266 Harrell Responds, yes.
- 272 Patrick Braatz Executive Director, Oregon Board of Dentistry. Submits testimony and testifies in opposition to HB 2283 (**EXHIBIT D**). Explains the board's procedures under the current law.
- 324 Braatz Continues testimony, expressing concern that the proposed process is long and very public.
- 359 Dave McTeague Executive Director, Oregon Board of Chiropractic Examiners. Submits testimony and testifies in opposition to HB 2283 (**EXHIBIT E**). Indicates the board has clear statutory language and administrative rules outlining its process.

#### **TAPE 11, A**

- 003 McTeague Continues testimony. Refers to copies of orders in **Exhibit E**.
- 053 Rep. Flores Asks Mr. Braatz about the differences between Wisconsin's law (referred to in his testimony) and the proposed changes in HB 2283.
- 061 Braatz Responds that Wisconsin's law is similar to existing Oregon law.
- 069 Rep. Flores Asks Mr. Braatz if he would support compromise language or if he is totally opposed to the changes in HB 2283.
- 074 Braatz Responds that the changes should be made where there are problems with specific boards.
- 088 Rep. Garrard Asks how many cases of this nature are handled monthly or annually.
- 095 Braatz Replies that in the last 17 months, one individual was asked to submit to a psychological examination.

100	Rep. Garrard	Inquires about the results.
101	Braatz	Answers, the case is still under disciplinary review.
103	Rep. Garrard	Asks how many practicing dentists have lost their license through this process.
106	Braatz	Responds, none.
110	Chair Ackerman	Requests clarification of the license suspension process. Asks if the agency's decision is appealable to the circuit court.
114	McTeague	Explains the investigative process.
131	Chair Ackerman	Inquires when the circuit court becomes involved.
137	McTeague	Responds that if the board issues a competency order, it can be overturned only by the circuit court.
141	Chair Ackerman	Asks if the process in HB 2283 is part of the original proceeding before an administrative law judge.
149	McTeague	Replies, yes.
150	Chair Ackerman	Inquires if the hearing could be part of a license suspension proceeding or a separate stand-alone proceeding.
152	McTeague	Responds, no. Explains that the competency exam is an investigative process that needs to be completed so the board can render a decision.
156	Chair Ackerman	Asks what authority exists under current law to request or compel a licensee to undergo an examination.
159	McTeague	Replies, that varies from board to board.
167	Christine Chute	Attorney, Business Activities Section, DOJ. Submits testimony and testifies in opposition to HB 2283 ( <b>EXHIBIT F</b> ).
200	Chute	

States that agency statutes grant authority to order competency examinations; however, not all have the authority.

- 231 Chute Explains the investigative and board recommendation processes.
- 270 Chute Points out that HB 2283 will affect commercial drivers. Emphasizes that the Oregon Department of Transportation must retain the ability to immediately order evaluation of commercial drivers in order to retain access to federal highway funding.
- 297 Kathleen Haley Executive Director, Board of Medical Examiners. Submits testimony and testifies in opposition to HB 2283 (**EXHIBIT G**). Raises concern about the length of time contested case hearings take.
- 359 Rep. Macpherson Asks if the issue in HB 2283 is expansion of authority to order physical or mental examinations.
- 366 Chute Responds that is a concern that could be corrected by amending the bill.
- 371 Rep. Macpherson Asks if a license is suspended during the internal process and appeal to circuit court.
- 376 Chute Replies, no. Explains that the issue that ends up in circuit court is whether the board had a basis under law to order the evaluation. Advises this is still the investigative stage and the license has not been suspended.
- 388 Rep. Macpherson Inquires if HB 2283 creates an administrative law judge process to make that decision.
- 398 Haley Responds that under the medical board, there is no suspension of a physician's practice during the evaluation.
- 408 Chair Ackerman Asks if HB 2283 has the effect of postponing the investigative process and allowing the licensee to go to contested case hearing on the narrow issue of the examination order; and if the administrative law process is appealable to the court of appeals.
- 430 Chute Replies, that is correct.

- 431 Chair Ackerman Asks if under the current process an investigation shows that an examination is warranted and the licensee refuses, that is directly appealable to the circuit court.
- 434 Chute Answers, yes.

**TAPE 10, B**

- 003 Martin Pittioni Executive Director, Board of Psychologist Examiners. Testifies as neutral on HB 2283.

**The following prepared testimony is submitted for the record without public testimony:**

- Lori Makinen Veterinary Medical Examining Board. Submits written testimony in opposition to HB 2283 (**EXHIBIT Q**).
- Kimberly Cobrain Oregon State Board of Nursing. Submits written testimony in opposition to HB 2283 (**EXHIBIT S**).
- Tom Olsen Employment Department. Submits written testimony in opposition to HB 2283 (**EXHIBIT T**).
- 029 Chair Ackerman Closes the public hearing on HB 2283. States there will be no work session on HB 2283. Indicates that the investigative process and license revocation proceedings should be integrated. Requests the parties to reach compromise.

**HB 2285 - PUBLIC HEARING**

- 036 Chair Ackerman Opens the public hearing on HB 2285, which extends application of statute governing ex parte communications in proceedings before administrative law judges of Office of Administrative Hearings to all contested case hearings.
- 041 Gary Harrell Administrative Law Section, OSB. Submits testimony and testifies in support of HB 2285 (**EXHIBIT H**). Discusses ex parte communication.
- 072 Harrell Continues with testimony on discovery. Cites examples of items not discoverable under current rule.

104	Harrell	Concludes with testimony on exculpatory information.
137	Chair Ackerman	Reiterates that there will be no work session on HB 2285.
145	Philip Schradle	Special Counsel to the Attorney General, DOJ. Submits testimony and testifies in opposition to HB 2285 ( <b>EXHIBIT I</b> ).
220	Schradle	Continues with testimony on confidentiality provisions for health licensing boards and attorney general model rules on discovery.
255	Schradle	Discusses ex parte communication and the statutory obligation to guarantee a fair hearing.
277	Cory Streisinger	Director, Department of Consumer and Business Services. Submits Governor's letter expressing concerns with HB 2285 ( <b>EXHIBIT J</b> ). Submits testimony and testifies in opposition to HB 2285 ( <b>EXHIBIT K</b> ). Reads into the record comments by a Division of Finance and Corporate Securities enforcement officer.
369	Streisinger	Expresses concern about the proposed change to Section 9 in HB 2285, which would change the standard for how findings of fact are finalized.

#### **TAPE 11, B**

020	Marcia Ohlemiller	Bureau of Labor and Industries. Submits testimony and testifies in opposition to HB 2285 ( <b>EXHIBIT L</b> ). Raises fiscal concern.
060	Ohlemiller	Expresses concern about changing "relevant" to "related to" in HB 2285 Section 3(3).
080	Ohlemiller	Refers to HB 2285 Section 4(4) concerning payment for discovery and indicates preference for free exchange of discovery.
093	Ohlemiller	Points to HB 2285 Section 4(6) requiring disclosure of names and addresses of prospective witnesses. Expresses a preference for this to be at the discretion of the administrative law judge.
124	Patty Glenn	Executive Director, Oregon Board of Massage Therapists. Testifies as neutral on HB 2285. Explains the board's investigation process, which insures a preponderance of evidence.



186	Scott Taylor	Oregon Real Estate Commissioner. Testifies in opposition to HB 2285. Expresses concern with Sections 4 and 8 of HB 2285.
218	Taylor	Continues testimony with statistics on cases heard, number of appeals and costs.
289	Kathleen Haley	Oregon Board of Medical Examiners. Testifies and submits testimony in opposition to HB 2285 ( <b>EXHIBIT M</b> ).
333	Martin Pittioni	Executive Director, Board of Psychologist Examiners. Testifies and submits testimony in opposition to HB 2285 ( <b>EXHIBIT N</b> ). Expresses concern with HB 2285 undermining confidentiality.
380	Patrick Braatz	Executive Director, Oregon Board of Dentistry. Submits testimony in opposition to HB 2285 ( <b>EXHIBIT O</b> ).
384	Dave McTeague	Executive Director, Oregon Board of Chiropractic Examiners. Submits testimony in opposition to HB 2285 ( <b>EXHIBIT P</b> ).

**The following prepared testimony is submitted for the record without public testimony:**

	Kimberly Cobrain	State Board of Nursing. Submits written testimony in opposition to HB 2285 ( <b>EXHIBIT R</b> ).
387	Chair Ackerman	Closes the public hearing on HB 2285 and adjourns the meeting at 10:25 a.m.

**EXHIBIT SUMMARY**

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1. **A. HB 2275, written testimony, Wendy Johnson, 6 pp**
2. **B. HB 2275, written testimony, Shani Fuller, 3 pp**
3. **C. HB 2283, written testimony, Gary Harrell, 1 p**
4. **D. HB 2283, written testimony, Patrick Braatz, 2 pp**
5. **E. HB 2283, written testimony, Dave McTeague, 30 pp**
6. **F. HB 2283, written testimony, Christine Chute, 2 pp**
7. **G. HB 2283, written testimony, Kathleen Haley, 2 pp**
8. **H. HB 2285, written testimony, Gary Harrell, 2 pp**

9. I. HB 2285, written testimony, Philip Schradle, 6 pp
10. J. HB 2285, written testimony of MardiLyn Saathoff, Cory Streisinger, 1 p
11. K. HB 2285, written testimony, Cory Streisinger, 2 pp
12. L. HB 2285, written testimony, Marcia Ohlemiller, 3 pp
13. M. HB 2285, written testimony, Kathleen Haley, 7 pp
14. N. HB 2285, written testimony, Martin Pittioni, 2 pp
15. O. HB 2285, written testimony, Patrick Braatz, 2 pp
16. P. HB 2285, written testimony, Dave McTeague, 2 pp
17. Q. HB 2283, written testimony, Lori Makinen, 1 p
18. R. HB 2285, written testimony, Kimberly Cobrain, 4 pp
19. S. HB 2283, written testimony, Kimberly Cobrain, 1 p
20. T. HB 2283, written testimony, Tom Olsen, 2 pp