

HOUSE COMMITTEE ON JUDICIARY

March 10, 2003 Hearing Room 357

1:00 p.m. Tapes 72 - 75

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Gordon Anderson, Vice-Chair
 Rep. Robert Ackerman, Vice-Chair
 Rep. Jeff Barker
 Rep. Bob Jenson
 Rep. Jerry Krummel
 Rep. Greg Macpherson
 Rep. Floyd Prozanski
 Rep. Lane Shetterly

STAFF PRESENT: **Bill Joseph, Counsel**
 Ann Martin, Committee Assistant

MEASURE/ISSUES HEARD: **Informational Meeting: Medical Liability Insurance/Tort Reform**

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.

TAPE/#	Speaker	Comments
Tape 72, A		
003	Chair Williams	Opens the meeting at 1:06 p.m. Discusses Medical Liability/Tort Reform and 3-day hearings with committee. Calls up the first panel of presenters: Constance Powell, M.D., Monica Wehby, M.D., Senator Schrader, Bill Long, M.D., and Scott Gallant.
<u>Setting the Stage-Problem Statement</u>		
059	Constance Powell	M.D. President, Oregon Medical Association (OMA). Submits testimony and testifies in support of tort reform (EXHIBIT A).
199	Monica Wehby	M.D., Pediatric Neurosurgeon. Submits testimony and testifies in support of tort reform (EXHIBIT B).
390	Senator Kurt Schrader	Senate District 20. Testifies in support of tort reform.
TAPE 73, A		
003	Sen. Schrader	Continues his testimony in support of tort reform.
060	Bill Long	M.D. Submits testimony and testifies in support of tort reform (EXHIBIT C).
133	Scott Gallant	Government Affairs, Oregon Medical Association. Submits testimony and testifies in support of tort reform (EXHIBITS D & E).
189	Rep. Prozanski	Asks what Mr. Gallant means by shifting money from one pot to another.
192	Gallant	Explains, says that they will consider any real alternative proposal.
210	Rep. Prozanski	Asks if OMA and their participants are looking to maintain access for patients and Oregonians, and wanting to keep the premiums reasonable and affordable.
212	Gallant	Answers, that is correct.
218	Rep. Jenson	Asks Dr. Wehby how the malpractice insurance rates in Oregon compare to Washington and California rates.

222	Dr. Wehby	Answers that they are higher in Oregon than in California and explains.
236	Dr. Powell	States that they will get that information and provide it to the committee. Discusses California's rates.
246	Dr. Wehby	Comments that she has a report from the American Association of Neurological Surgeons on the national data and will give a copy to Rep. Jenson.
250	Vice-Chair Anderson	Asks Dr. Powell if the figure of \$1.5 billion is outstanding litigation.
256	Dr. Powell	Says, yes, that is outstanding litigation.
257	Gallant	Responds that in Oregon that translates into an average prayer of 3.3 million for the cases that have been filed.
262	Vice-Chair Anderson	Asks Dr. Long what percentage of the trauma specialists are giving up their practices.
268	Dr. Long	Replies that it depends upon the number of specialties.
282	Vice-Chair Anderson	Asks how many doctors he expects will be practicing in 2004.
285	Dr. Long	Says that he doesn't have a number.
290	Rep. Krummel	Wonders about Dr. Wehby's fear of being sued. Asks if that effects decisions that she makes as a surgeon.
296	Wehby	Says not while she's in the operating room, there is not enough time. Adds that she worries more when she is talking to her colleagues about doctors getting sued.
336	Rep. Krummel	Inquires about doctors treating Oregon Health Plan (OHP) patients outside of their clinic.
353	Dr. Long	Explains how they treat OHP patients.
374	Dr. Powell	Shares physicians' experiences working in third-world countries compared to here.
389	Vice-Chair Ackerman	Asks Mr. Gallant if a claimant must support his case by expert medical testimony in a medical malpractice case.
394	Gallant	Answers, that is true.
398	Vice-Chair Ackerman	Asks if he is aware of any cases that resulted in large jury verdicts that could have been settled substantially less.
407	Gallant	Responds that it's a judgment call on the parties.
422	Vice-Chair Ackerman	Notes a case coming out of Douglas County where the claim could have been settled. Asks Mr. Gallant if he is aware of that case.
428	Gallant	Says he is aware of the case, but not the specifics of the case.

TAPE 72, B

009	Vice-Chair Ackerman	Asks Mr. Gallant if he sees any need for reform such as a mandatory mediation process in medical malpractice claims, in order to have the case settled as early as possible.
013	Gallant	Answers that it would be legitimate to debate except that the <i>Lakin</i> decision makes that unconstitutional.

Access: (Oregon Association of Hospitals and Health Systems)

021	Chair Williams	Introduces the second panel: Dr. Rick Wopat, Senator Morse, and Larry Mullens.
033	Senator Frank Morse	Senate District 8. Submits testimony and testifies in support of tort reform (EXHIBIT F) .
088	Larry Mullens	President, Samaritan Health Systems. Testifies in support of tort reform.
194	Dr. Rick Wopat	Samaritan Health Systems. Testifies in support of tort reform.

Costs (NW Physicians Mutual Insurance Co. & CAN)

300	Chair Williams	Introduces the next panel: James Dorigan, Bill Gallagher, Ron
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		Stegeman, Sharon Robinson, Rep. Monnes-Anderson and Rep. Alan Bates.
319	Rep. Monnes-Anderson	Nurse, House District 50. Testifies in support of Medical Liability Reform.
369	Dr. Bill Gallagher	President, NW Physicians Mutual Insurance Co. Testifies in support of tort reform.
TAPE 73, B		
024	Rep. Alan Bates	M.D., House District 5. Testifies in support of tort reform.
076	James Dorigan, Jr.	Chief Executive Officer, NW Physicians Mutual Insurance Co. Submits testimony and testifies in support of tort reform (EXHIBIT G) .
187	Dorigan	Discusses implementation of a comprehensive tort reform package.
246	Rep. Shetterly	Asks Mr. Dorigan which states that have higher premiums are damage cap states.
272	Dorigan	Answers, none of them. Continues his discussion.
293	Ron Stegeman	CNA Insurance Companies. Submits testimony and testifies in support of tort reform.
306	Sharon Robinson	CNA Insurance Companies. Submits testimony and testifies in support of tort reform (EXHIBIT H) .
TAPE 74, A		
003	Robinson	Continues her testimony in support of tort reform.
084	Rep. Prozanski	Asks for statistics from NW Physicians Mutual Insurance Co. regarding what happened between 1983 and 1988 when there were no caps in place. Asks for the data on OB/GYN premiums for all 50 states with the caps listed.
107	Rep. Krummel	Asks Dr. Gallagher if a professional liability fund (PLF) scenario would help the problem.
115	Dr. Gallagher	Answers that a PLF would not help physicians. Elaborates.
133	Rep. Krummel	Asks Dr. Gallagher if the monopolization of malpractice insurance would solve the problem.
136	Dr. Gallagher	Answers that they would not want to insure every doctor in Oregon.
147	Vice-Chair Ackerman	Inquires about amounts paid out on several cases.
156	Stegeman	Answers that the majority of those claims are still pending.
165	Vice-Chair Ackerman	Asks if NW Physicians Mutual Insurance Co. has other lines of insurance.
167	Dr. Gallagher	Answers that they are single-line, medical professional liability.
<u>The Call for Action</u>		
180	Chair Williams	Introduces panel: Dr. Colin Cave, Dr. Peter Bernardo, Fawn Brandon and J. L. Wilson.
193	Dr. Colin Cave	M.D., Northwest Permanente, Portland. Submits testimony and testifies in support of tort reform (EXHIBIT I) .
264	Dr. Peter Bernardo	M.D., Submits testimony and testifies in support of tort reform (EXHIBIT J) .
351	Dr. Robbie Law	M.D., Reedsport. Submits testimony and testifies in support of tort reform (EXHIBIT K) .
Tape 75, A		
001	Dr. Law	Continues his testimony in support of tort reform.
028	Fawn Brandon	Patient of Dr. Law. Submits testimony and testifies in support of tort reform (EXHIBIT L) .
047	J. L. Wilson	Director, National Federation of Independent Businesses (NFIB). Testifies in support of tort reform.
106	Chair Williams	Adjourns the meeting at 3:30 p.m.

EXHIBIT SUMMARY

A – Medical Liability Insurance, written testimony, submitted by Dr. Constance Powell, 2 pgs.

B – Written testimony, submitted by Dr. Monica Wehby, 2 pgs.

C – Medical Liability Insurance, written testimony, submitted by Dr. William Long, 10 pgs.

D – Testimony from the Oregon Medical Association, and HB 2492-SB 93, submitted by Scott Gallant, 50 pgs.

E – Addressing the New Health Care Crisis, U.S. Department of Health and Human Services, submitted by Scott Gallant, 34 pgs.

F – Written testimony, submitted by Senator Frank Morse, 2 pgs.

G – Powerpoint presentation, James Dorigan, NW Physicians Mutual Insurance Co., 8 pgs.

H – Medical Liability Insurance, statement of CNA Insurance Companies, submitted by Ronald Stegeman and Sharon Robinson, 6 pgs.

I – Medical Liability Insurance, statement submitted by Colin Cave, M.D., 2 pgs.

J – Written testimony, submitted by Peter Bernardo, M.D., 3 pgs.

K – Written testimony, submitted by Robbie Law, M.D., 3 pgs.

L – Written testimony, submitted by Fawn Brandon, 2 pgs.

M – Written testimony of Bruce Bishop, 17 pgs. (*Did not testify, but submitted testimony*)