

## HOUSE COMMITTEE ON JUDICIARY

March 11, 2003 Hearing Room 357

1:00 p.m. Tapes 76-77

**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/  
  Tort Reform-Opposing Views**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 76, A</b>		
004	Chair Williams	Opens the meeting at 1:12 p.m.
<b><u>Introduction and Malpractice Experiences</u></b>		
016	Chair Williams	Introduces first panel: Mic Alexander, Kathy and Jerry Brooks, and Jessica Howard.
024	Mic Alexander	Oregon Trial Lawyers Association. Testifies on tort reform.
038	Kathy Brooks	Victim of malpractice, mother of Jerry Brooks. Submits testimony and testifies on tort reform ( <b>EXHIBIT A</b> ).
132	Jessica Howard	Victim of malpractice. Submits testimony and testifies on tort reform ( <b>EXHIBIT B</b> ).
190	Rep. Krummel	Asks Ms. Howard what kind of consent she gave her doctor.
197	Howard	Answers, that she did not give them consent and explains her experience.
<b><u>What did Medical Injury Compensation Reform Act ( MICRA) do for California</u></b>		
216	Chair Williams	Introduces Harvey Rosenfield.
225	Harvey Rosenfield	President, Foundation for Taxpayer & Consumer Rights. Submits testimony and testifies on tort reform ( <b>EXHIBITS C-E</b> ).
380	Rosenfield	Continues his discussion on tort reform.
<b>TAPE 77, A</b>		
003	Rosenfield	Continues his testimony in opposition to tort reform.
067	Rep. Krummel	Asks Mr. Rosenfield to explain California Medical Malpractice Premiums graph.
074	Rosenfield	Explains graphs and discusses Proposition 103.
099	Rep. Krummel	Asks Mr. Rosenfield about his comment on insurance companies being non-exempt from anti-trust laws and how that will affect

		premiums.
105	Rosenfield	Answers that there are two anti-trust exemptions that are applicable, and explains.
130	Rep. Krummel	Inquires about the medical community and antitrust laws.
146	Rosenfield	Says that he doesn't see the medical community as exempt from antitrust laws, but does see the government regulating the doctors.
155	Rep. Macpherson	Asks questions about premium chart.
166	Rosenfield	Says that the chart reflects pure premiums taken in by the insurance companies.
189	Vice-Chair Anderson	Inquires about caps placed on attorneys.
198	Rosenfield	Cites statistics from his testimony dated February 2003, on page 31 ( <b>Exhibit C</b> ).
218	Vice-Chair Anderson	Asks where expenses for a case come from.
221	Rosenfield	States that the expenses come from what the victim gets. Stresses that the expenses come out of the plaintiff's pocket, and explains.
268	Chair Williams	Asks if Mr. Rosenfield has reviewed Oregon's malpractice insurance rates.
275	Rosenfield	Answers, no he has not; he is not an actuary, but that he would be very interested in seeing those figures.
291	Rep. Jenson	Asks if he knows how the insurance companies invest their money.
304	Rosenfield	Reports that they did a national study and concluded that there were millions of dollars invested in Enron and WorldCom. Says that he does not know about the companies in Oregon.

### **Medical Malpractice Experiences**

333	Chair Williams	Introduces Steve Brown.
342	Steve Brown	Victim of medical malpractice. Submits testimony and testifies in opposition to tort reform ( <b>EXHIBIT F</b> ).

### **Tape 76, B**

002	Brown	Continues his testimony on his experience with medical malpractice.
059	Tempest Heston	Victim of medical malpractice. Mother of Mikayla Heston. Testifies on tort reform.

### **Myths, Facts and Solutions, the Impact on the State of Oregon**

171	Mic Alexander	Oregon Trial Lawyers Association. Concludes his testimony in opposition to tort reform.
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### **TAPE 77, B**

002	Alexander	Continues his testimony in opposition to tort reform.
023	Rep. Krummel	Asks Mr. Alexander how much he would receive if he was his client and was awarded \$5 million.
029	Alexander	Says if they went to trial then the fees would be one-third, the out-of-pocket costs would be \$50,000 to \$100,000, and there might be liens that would need to be paid off ( <b>EXHIBIT G</b> ).
042	Rep. Krummel	Asks if he might receive around 3 million dollars.
045	Alexander	Answers, yes that is probably about right.
054	Rep. Krummel	Asks what Mr. Alexander thinks about forming a professional liability fund (PLF). Asks if the costs per physician would be \$5,000.
059	Alexander	Replies that he doesn't know if it would cost that much. Says that he thinks the cost would be more than that.

075	Rep. Krummel	Asks if they should set a cap on attorney's fees.
089	Alexander	Answers, no. Explains why.
122	Rep. Krummel	Asks what would happen if they restrict defense fees also.
124	Alexander	States that he would be very interested to see that legislation come forward.
137	Rep. Macpherson	Asks for his comment on a PLF system and how that could affect the medical field.
149	Alexander	Responds that the tort system would identify incompetent doctors. Explains his opinion on the PLF.
192	Vice-Chair Anderson	Says that he sees a parallel, but not a very good parallel between limiting attorney's fees and doctor's liability insurance. Wonders how he sees the PLF solving this problem.
213	Alexander	Answers that he doesn't know if the PLF will be an ultimate solution, but says that he does know that it will protect the medical specialists.
266	Vice-Chair Anderson	Asks Mr. Alexander how he is willing to compromise.
254	Alexander	Says that he will accept a fair solution. Discusses the tort reform bills and says that all of the bills deny access and increase litigation costs. Feels that none of the bills are constructive to the judicial system.
307	Vice-Chair Anderson	Points out that the legislature will make the decision on this issue, not the lawyers.
314	Alexander	Replies that he knows that and simply wants to find something that works.
320	Rep. Shetterly	Asks Mr. Alexander about securities.
342	Alexander	Answers that he thinks there is something for securities.
344	Chair Williams	Comments that Counsel Joseph will check on the PLF and securities.
355	Vice-Chair Ackerman	Asks Mr. Alexander what his reaction would be to fund a task force in hopes of finding a middle ground.
371	Alexander	Answers that he thinks it would be helpful. Adds that there are no solutions that will give immediate relief.
393	Rep. Prozanski	Asks Mr. Alexander how much payouts for an attorney are.
404	Alexander	States that the standard is 30-40 percent.
407	Rep. Prozanski	Asks if a lawyer's costs of doing the preparation for a trial and they are not successful then who pays that cost of \$50,000 to \$100,000.
428	Alexander	Answers that normally he would absorb those costs and that it would be an out-of-pocket loss.
451	Chair Williams	Adjourns the meeting at 3:00 p.m.

## **EXHIBIT SUMMARY**

**A – Written testimony, submitted by Kathy Brooks, 1 pg.**

**B – Written testimony, submitted by Jessica Howard, 1 pg.**

**C - Testimony of Harvey Rosenfield, 34 pgs.**

**D – Report, How Insurance Reform Lowered Doctors' Medical Malpractice Rates in California, submitted by Harvey Rosenfield, 9 pgs.**

**E – News Releases, from California Department of Justice, submitted by Harvey Rosenfield, 6 pgs.**

**F – Written testimony, submitted by Steve Brown, 1 pg.**

**G – Notice of Lien, from Oregon Department of Human Services, submitted by Mic Alexander, 1**

pg.