

HOUSE COMMITTEE ON JUDICIARY

March 17, 2003 Hearing Room 357
1:00 p.m. Tapes 86 - 88

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: **HB 2492 Public Hearing**
 HB 2493 Public Hearing
 HB 2494 Public Hearing
 HB 2495 Public Hearing
 HB 2496 Public Hearing
 HB 2497 Public Hearing
 HB 2498 Public Hearing
 HB 2591 Public Hearing

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 86, A		
003	Vice-Chair Anderson	Calls the meeting to order at 1:14 p.m. Opens a public hearing on HB 2492, 2493, 2494, 2495, 2496, 2497, 2498 and HB 2591.
<u>HB 2492, 2493, 2494, 2495, 2496, 2497, 2498 and 2591 PUBLIC HEARING</u>		
014	Gwen Dayton	Vice-President, Oregon Association of Hospitals and Health Systems. Submits testimony and testifies on HB 2492, 2493, 2494, 2495, 2498 and 2591 (EXHIBIT A).
015	Mike Crew	General Counsel, Oregon Medical Association (OMA). Testifies on HB 2492 and HB 2497.
100	Dr. Michael Bowen	Obstetrician/Gynecologist, Salem. Submits testimony and testifies on HB 2492, 2494 and 2497 (EXHIBIT B).
270	Rep. Krummel	Asks Dr. Bowen how long after a baby is delivered is the doctor liable for injury.
277	Dr. Bowen	Answers that he is not sure.
292	Dayton	Continues her testimony in support of the bills.
341	Vice-Chair Anderson	Asks who would make the determination if testimony was scientifically based.
344	Dayton	Answers that the court would need to make that determination.
346	Rep. Shetterly	Asks if these are all foundational points that the court already makes a determination on.

354	Dayton	Says these are foundational questions that are not contained in the law currently.
358	Crew	Responds that as a general proposition, the court should make a determination on expert testimony, particularly scientific testimony, before it's put to the jury.
397	Rep. Barker	Asks about best practices or evidenced-based testimony.
407	Crew	Explains tests on testimony.
422	Dayton	Concludes with her testimony in support of HB 2494.
487	Crew	Says that the OMA supports HB 2492, 2493, 2494 and 2495.
TAPE 87, A		
047	Rep. Jenson	Asks about the support of HB 2495.
055	Crew	Answers that this limitation in California has worked well.
060	Rep. Prozanski	Asks Mr. Crew if he could provide the data on the poll as well as the questions that were asked.
064	Crew	Says that he will ask the OMA if they can make that available to the committee. Continues his testimony in support of HB 2496.
081	Crew	Discusses HB 2498 and HB 2591.
152	Vice-Chair Anderson	Asks how HB 2591 interfaces with the federal bill.
159	Dayton	Says that most of the issues being discussed are contained in the federal bill.
165	Rep. Jenson	Asks about HB 2591.
188	Crew	Answers that the bill does call for interest to be added back.
200	Rep. Macpherson	Asks if there is a predominant pattern that there is a structured settlement of many personal injury awards today.
211	Crew	Explains that structured settlements are the current practice.
235	Dayton	States that the Oregon Association of Hospitals and Health Systems supports HB 2495, 2591 and 2498 in addition to the bills she testified on.
260	Glenn Rodriguez	Primary Care Physician and Chief Medical Officer, Providence Health System. Submits testimony and testifies in support of HB 2492, 2494 and 2497 (EXHIBIT C).
TAPE 86, B		
003	Rodriguez	Continues his testimony on HB 2492, 2494 and 2497.
024	Vice-Chair Ackerman	Asks what the gross revenue was for Mr. Rodriguez' operations from 2001-2002. Asks if the increased gross has to do with the increase in medical malpractice insurance.
037	Rodriguez	Answers it is true that medical malpractice costs are proportionate to the amount of work done. Says he does not have exact numbers.
046	Vice-Chair Ackerman	Asks how they insure.
050	Rodriguez	Answers that they self-insure up to an initial dollar limit then they buy external insurance in layers.
056	Rep. Shetterly	Comments that the costs need to be addressed that are putting at risk our ability to provide medical care in rural communities and medical care in the specialty areas.
098	Jeff Heatherington	Director, Osteopathic Physicians and Surgeons of Oregon. Testifies in support of bills.
122	Vice-Chair Ackerman	Asks Mr. Heatherington who the major medical insurance carrier is for his clients/members.
124	Heatherington	Answers that it's either CNA or Northwest Mutual.
130	Rep. Shetterly	Comments that we are talking about taking some first steps on some long-term changes and not addressing the real issue of cost of providing medical care in our rural communities.

148	Rep. Jenson	Discusses living in rural Oregon. Says that some professionals want to leave rural Oregon for cities.
194	Rep. Krummel	Asks Mr. Heatherington how many members are there in the Osteopathic Association.
196	Heatherington	Answers about 420.
200	Rep. Krummel	Asks him if he has looked at the idea of a Professional Liability Fund.
204	Heatherington	Answers, no, they have not because the members are opposed. Says that it would be astronomical to get the thing started.
212	Jonathan Hoffman	Attorney, Martin Bischoff. Submits testimony and testifies on HB 2492, 2493 and HB 2494 (EXHIBITS D & E).
TAPE 87, B		
010	Hoffman	Continues his testimony.
016	Martha Hodgkinson	Attorney. Testifies on HB 2492, 2493 and 2494.
070	Rep. Barker	Asks if we are the last state to have trial by ambush.
084	Hoffman	Answers, yes.
092	Rep. Prozanski	Asks Mr. Hoffman about HB 2494 in conjunction with HB 2493.
100	Hoffman	Explains expert disclosure and the change that was made in the <i>Daubert Decision</i> .
218	Rep. Prozanski	Asks if what he wants is for the judge to decide expert testimony.
223	Hoffman	Says that the jury is the ultimate decider of facts, but the judge determines whether something satisfies the evidentiary threshold.
245	Rep. Krummel	Asks how often he has seen a jury made up of medical professionals.
254	Hodgkinson	Answers that since the lawyers have some control over who is going to be the jury, typically there are not very many doctors sitting on a jury.
278	Larry Wobbrock	Attorney. Submits testimony and testifies in opposition to HB 2494 (EXHIBIT F).
422	David Miller	Oregon Trial Lawyers Association. Submits testimony and testifies in opposition to HB 2494 and 2495 (EXHIBIT G).
TAPE 88, A		
010	Miller	Continues his testimony in opposition to HB 2494 and 2495.
074	Linda Eyerman	Attorney. Submits testimony and testifies in opposition to HB 2493 (EXHIBIT H). Believes that the system in place is working well.
235	Rep. Macpherson	Asks if HB 2493 and 2494 are passed will the cost for advocacy be increased or reduced.
248	Miller	States that it would increase them significantly.
267	Chair Williams	Closes the public hearing on HB 2492, 2493, 2494, 2495, 2496, 2497, 2498, and 2591. Adjourns the meeting at 3:20 p.m.

EXHIBIT SUMMARY

A – HB 2492, 2493, 2494, 2495, 2498, and 2591, written testimony submitted by Gwen Dayton, 3 pgs.

B – HB 2492, 2494, 2497, written testimony submitted by Dr. Michael Bowen, 3 pgs.

C – HB 2492, 2494, 2497, written testimony submitted by Glenn Rodriguez, 3 pgs.

D – HB 2493, written testimony submitted by Jonathan Hoffman, 7 pgs., and an article on the admissibility of expert testimony, 9 pgs.

E – HB 2494, written testimony submitted by Jonathan Hoffman, 2 pgs.

F – HB 2494, written testimony submitted by Lawrence Wobbrock, 6 pgs.
G – HB 2494 and 2495, written testimony submitted by David Miller, 5 pgs.
H – HB 2493, written testimony submitted by Linda Eyerma, 3 pgs.