

## SENATE COMMITTEE ON JUDICIARY

April 03, 2003  
8:00 a.m.

Hearing Room 343  
Tapes 85-86

**MEMBERS PRESENT:**     **Sen. John Minnis, Chair**  
                                  **Sen. Ginny Burdick, Vice-Chair**  
                                  **Sen. Ted Ferrioli**  
                                  **Sen. Charlie Ringo**  
                                  **Sen. Charles Starr**  
                                  **Sen. Vicki Walker**

**STAFF PRESENT:**       **Bill Joseph, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **HB 2307A Public Hearing**  
                                  **HB 2309A Public Hearing**  
                                  **HB 2305A Public Hearing and Work Session**  
                                  **HB 2306A Work Session**

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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 85, A</b>		
003	Chair Minnis	Calls the meeting to order at 8:18 a.m. and opens a public hearing on HB 2307A and HB 2309A.
<b><u>HB 2307A AND HB 2309A PUBLIC HEARING</u></b>		
012	Gwen Dayton	Oregon Association of Hospitals and Health Systems. Submits testimony and testifies in support of HB 2307A that revises requirements for disclosure of or access to certain health information to conform to federal law relating to privacy of health information, and HB 2309A that allows physician or psychologist with patient authorization or court order to provide certain information to court visitor in protective proceeding <b>(EXHIBIT A)</b> .
099	Richard Lane	Oregon Trial Lawyers Association. Submits testimony and testifies in opposition to HB 2307A <b>(EXHIBIT B)</b> .
115	Bill Joseph	Committee Counsel. Explains that there are –A3 amendments being drafted by Legislative Counsel and will be available by Monday, April 7.
125	Dayton	Explains that there is no objection to the small changes suggested by the Oregon Trial Lawyers Association.
206	Chair Minnis	Asks if the Oregon Trial Lawyers Association has specific issues to discuss.
133	Lane	Discusses the issue of applicability of the psychotherapy note provisions.
183	Dayton	Believes the existing definition is sufficient, but does not object to the change suggested by the Oregon Trial Lawyers

		Association.
275	Vice Chair Burdick	Asks about the proposed amendments ( <b>EXHIBIT C</b> ).
278	Dayton	Clarifies that the proposed amendments add to the definition of a psychotherapy note, and what can be disclosed.
294	Lane	Explains that the referenced amendments are agreed to, but objections remain.
303	Vice Chair Burdick	Asks if there would be harm in removing “health care services provider”.
305	Dayton	Contends that there would be massive confusion.
315	Lane	Responds that there is a way to handle the change.
326	Chair Minnis	Asks about citing HIPAA regulations in these bills.
328	Dayton	Explains that there are issues with citing federal law. Suggests new language.
354	Lane	Replies that all parties have found common ground.
371	Chair Minnis	Reviews the agreed upon language with Mr. Lane and Ms. Dayton.
409	Chair Minnis	Closes the public hearing on HB 2307A and 2309A and opens a work session on HB 2305A.

**HB 2305A WORK SESSION**

<b>418</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to HB 2305A.</b>
		<b>VOTE: 6-0</b>
<b>424</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>431</b>	<b>Vice Chair Burdick</b>	<b>MOTION: Moves to ADOPT the conceptual amendment to HB 2305A which would be a new Subsection 2 in Section 1 that would read “in addition to the rights and obligations expressed in Sections 1 through 7 of this act, the Federal Health Insurance Portability and Accountability Act privacy regulations, 42CRF part 160 and 164, establish further rights and obligations regarding use and disclosure of protected health information and the rights of individuals regarding their protected health information.”</b>
		<b>VOTE: 6-0</b>
<b>447</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>460</b>	<b>Chair Minnis</b>	Closes the work session on HB 2305A and re-opens a public hearing on HB 2309A.

## **HB 2309A PUBLIC HEARING**

### **TAPE 86, A**

004	Gwen Dayton	Oregon Association of Hospitals and Health Systems. Testifies in support of HB 2309A. Provides a section-by-section analysis.
072	Richard Lane	Oregon Trial Lawyers Association. Says there are no objections to HB 2309A.
074	Sen. Ringo	Asks for clarification of the release of information regarding blood alcohol levels.
080	Dayton	Says current law says “may” disclose and it is amended to say “shall” disclose.
082	Sen. Ringo	Asks if that amendment is driven by HIPAA.
083	Dayton	Says, yes it is.
089	Sen. Ringo	Expresses concern about disclosure to law enforcement being a deterrent to people receiving medical treatment.
092	Dayton	Discusses the policy decision.
118	Chair Minnis	Closes the public hearing on HB 2309A and opens a public hearing on HB 2305A.

## **HB 2305A PUBLIC HEARING**

127	Gwen Dayton	Discusses the –A3 amendments to HB 2305A. Says they are, for the most part, definitional changes ( <b>EXHIBIT D</b> ).
136	Richard Lane	Concurs that there is agreement on the –A3 amendments.
148	Chair Minnis	Asks for a section-by-section analysis of HB 2305A.
150	Lane	Provides an analysis of each section. Desires removal of Sections 6 and 7.
204	Chair Minnis	Asks what issues would arise if Sections 6 and 7 were deleted.
206	Dayton	Explains why there is objection to removal of Section 6. Explains what Section 7 does.
258	Vice Chair Burdick	Asks if there would be additional State causes of action as opposed to Federal causes of action.
259	Dayton	Says, yes, because HIPAA will become the standard of care in Oregon.
264	Vice Chair Burdick	Asks how a cause of action will be channeled.
265	Dayton	Says it will be through the State.
272	Lane	Respectfully disagrees. Believes everyone will have to file a complaint at the Federal level.
281	Chair Minnis	Asks if Oregon law would provide court action in Oregon courts.
292	Lane	Says the HIPAA rule being adopted says there is no private right of action.
303	Vice Chair Burdick	Expresses concern about the <i>Humphers</i> case.
327	Dayton	Discusses the <i>Humphers</i> case as it relates to HIPAA.
369	Chair Minnis	Discusses the private cause of action language in the bill.
374	Lane	Believes that Section 7, page 7 of the bill eliminates any type of State cause of action.
380	Dayton	Says the bill is not trying to create an additional cause of action over and above what might now exist.
386	Joseph	Agrees that it does not create additional causes of action, but it is also not getting rid of causes of action.
392	Chair Minnis	Asks if Section 7 could be worded more clearly.
402	Joseph	Explains that it is typical language found in detailed regulations.
427	Sen. Ringo	Observes that the goal is the same, but the language needs clarification.
462	Chair Minnis	Calls for a recess at 9:20 a.m.

**TAPE 85, B**

022	Chair Minnis	Reconvenes the public hearing on HB 2305A at 9:30 a.m.
025	Dayton	Provides language that would be acceptable.
038	Holly Robinson	Legislative Counsel. Discusses the language and believes that it causes more confusion.
053	Chair Minnis	Clarifies what is being debated in the language of the bill.
058	Dayton	Provides further clarification.
080	Robinson	Confirms the language discussed.
111	Lane	Gives his own interpretation.
117	Robinson	Does not agree with the conclusion stated.
126	Chair Minnis	Discusses further the lack of understanding of Section 6.
131	Robinson	Says Section 6 says exactly what was expressed by the Chair.
184	Chair Minnis	Stresses the need for clarification and asks that it be dealt with before continuing with the public hearing.
239	Chair Minnis	Recesses the meeting at 9:45 a.m.
241	Chair Minnis	Reconvenes the meeting at 9:55 a.m.
245	Lane	Explains the change made that has met with approval by all.
251	Dayton	Confirms approval of the change.
255	Robinson	Confirms approval of the change.
263	Chair Minnis	Asks if there are other issues of the Oregon Trial Lawyers Association.
264	Lane	Says Section 16 is a concern.
266	Dayton	Explains Section 16. Continues discussion of the remainder of HB 2305A.
282	Chair Minnis	Asks about the rules for civil procedure.
289	Robinson	Explains the rules for civil procedure.
297	Joseph	Clarifies that a public hearing was held in the House regarding these rules.
312	Chair Minnis	Closes the public hearing on HB 2305A and opens a work session.

### HB 2305A WORK SESSION

320	Sen. Ringo	Asks if there will be other amendments relating to the costs of obtaining medical records.
322	Dayton	Says the -A3 amendments clarify the charges.
426	Vice Chair Burdick	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment to HB 2305A, page 7, line 1.</b> <b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
435	Chair Minnis	<b>MOTION: Moves to AMEND HB 2305A on page 7, in line 1, after "create a," insert "new".</b>
438	Vice Chair Burdick	<b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
448	Chair Minnis	<b>MOTION: Moves to ADOPT HB 2305A-A3 amendments dated 03/31/03.</b>
461	Vice Chair Burdick	<b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
466	Chair Minnis	Closes the work session on HB 2305A and opens a work session on HB 2306A.
475	Chair Minnis	

### HB 2306A WORK SESSION

476	Vice Chair Burdick	<b>MOTION: Moves to ADOPT HB 2306A-A3 amendments dated 03/31/03 (EXHIBIT E).</b> <b>VOTE: 6-0</b> <b>Hearing no objection, declares the motion CARRIED.</b>
483	Chair Minnis	
TAPE 86, B		
052	Molly Burns	Kaiser Permanente. Discusses the -A3 amendments and expresses concern about the term "employer" being used.
	Hennmann	
099	Vice Chair Burdick	Asks if there a fix for this.
100	Hennmann	Says removing the word "employer" would be helpful.
104	Lane	Responds that the terms were HIPAA-compliant terms. Doesn't believe there is a problem.
118	Hennmann	Talks about the use of the term "employer."
134	Chair Minnis	Asks that the word employer be removed.
139	Hennmann	Says there is a problem with Section 18 in HB 2306A.
157	Chair Minnis	Says these bills will come back on Monday with all the amendments.
184	Chair Minnis	Closes the work session on HB 2306A and adjourns the meeting at 10:15 a.m.

### EXHIBIT SUMMARY

- A – HB 2307A, written testimony submitted by Gwen Dayton, 2 pp
- B – HB 2307A, written testimony submitted by Richard Lane, 9 pp
- C – HB 2307A, suggested amendments submitted by Gwen Dayton, 9 pp
- D – HB 2305A, -A3 amendments submitted by staff, 1 p
- E – HB 2306A, -A3 amendments submitted by staff, 1 p