

HOUSE COMMITTEE ON HUMAN RESOURCES

April 06, 1999 Hearing Room E

1:00 PM Tapes 53 - 55

MEMBERS PRESENT: Rep. Jeff Kruse, Chair

Rep. Kitty Piercy, Vice-Chair

Rep. Betsy Close-Vice-Chair

Rep. Tim Knopp

Rep. Jerry Krummel

Rep. Mike Lehman

Rep. Bill Morrisette

Rep. Jackie Taylor

Rep. Jackie Winters

MEMBER EXCUSED:

STAFF PRESENT: Janet L. Carlson, Administrator

Diane M. Lewis, Administrative Support

MEASURE/ISSUES HEARD: HB 3164 Public Hearing

HB 2008 Public Hearing

HB 3030 Public Hearing

TAPE/#	Speaker	Comments
TAPE 53, A		
006	Chair Kruse	Calls the meeting to order at 1:08 P.M. and opens a public hearing on HB 3164.
<u>HB 3164 PUBLIC HEARING</u>		
012	Rep. Max Williams	House District 9, testifies in support of HB 3164. Submits ñ1 amendments dated 3/23/99 (EXHIBIT A) and introduces Mrs. Pat Biggs as his constituent and an active member of the Tigard school board. Explains that shortly after his election to office, Pat's husband, Art Biggs, approached him with a request that he support legislation regarding the expansion of medical informed consent laws in Oregon. Explains that Mr. Biggs proposed similar legislation in the 1997 legislative session. That legislation had a public hearing in the 1997 Human Resources Committee but went no further through the process. Regrets to inform the committee that one week ago Art Biggs passed away unexpectedly, as the result of a heart attack. Explains that Mr. Biggs was preparing testimony to present to the 1999 legislative session Human Resources Committee regarding HB 3164 and states that Art's wife, Pat, is here in his place. Believes that Mr. Biggs had a persuasive case to put before the committee.
034	Pat Biggs	Tigard, OR, submits and presents written testimony in support of HB 3164 (EXHIBIT B). Discusses her husband's diagnosis of prostate cancer in 1986. States that they received three "second opinions" not one of which discussed alternative treatments, such as radiation therapy. Explains that Mr. Biggs remained angry that he had not been given other treatment options nor did he have surgical side-effects thoroughly explained to him. States that doctors are not required to provide alternative treatments to patients. Relates that she and her husband would leave consultations with his physician feeling as if he had only understood a portion of the doctor's discussion. States that doctors use a great deal of medical "jargon" to explain what, in their opinion, is the best and most obvious treatment. Explains that Art became determined to change the system in Oregon when he learned that the state of Washington has law requiring doctors to provide their patients with options and treatment suggestions in writing and these disclosures are to be worded in language easily understood by the patient.
075	Biggs	Comments that health issues have shifted, and patients are becoming more involved in their own care. States that HB 3164 is about making a better system which empowers patients to be actively involved in their own treatment. States that patients have the right to question the authority of medical procedures. Advises the committee to look at Washington's law as well as existing medical consent forms.
125	Rep. Jackie Taylor	House District 1, testifies in support of HB 3164. States that Art Biggs wanted patients to know their options.
144	Rep. Williams	Describes the ñ1 amendments that make the bill more permissive than mandatory. States that Art wanted a law that would allow doctors to use the current informed consent procedures and would give them additional protections

		against liability, should they chose to give a patient more fully informed consent provisions.
160	Rep. Knopp	States that he met with Art Biggs the second week of session and concurs that Mr. Biggs was very passionate about the need for this legislation. Relates to Mrs. Biggs how much he enjoyed his visit with her husband.
168	Rep. Lehman	Explains that he has known Pat Biggs from school board meetings and recalls having discussions with Mr. Biggs regarding this legislation.
174	Biggs	Emphasizes that Art never made this bill about himself. States that her husband wanted patients to have a lawful right to information and be able to make informed decisions regarding their own treatment.
192	James Davis, Ed.D.	Chair, Oregon Campaign for Patient Rights (CPR), submits and presents written testimony in support of HB 3164 (EXHIBIT C). Dedicates the advocacy work that CPR is doing to the memory of Art Biggs.
250	Davis	Refers to EXHIBIT C, page 2, and comments that HB 3164 is a reasonable attempt to provide patients with information while allowing doctors protection from claims of inadequate communication.
278	Rep. Piercy	Asks about the situation of a doctor providing a patient with the options that he or she is most familiar with and having this patient returning and holding the doctor liable for not providing enough information on additional, alternative treatments.
290	Davis	Replies that the ñ1 amendments speak to this concern. Believes that the intent of the bill is requiring doctors to make a good faith effort to inform a patient of as many treatment options as possible. Would be willing to ask CPR to comment on the issue of liability.
305	Rep. Winters	Asks about illnesses that are not associated with multiple treatment options or are not known by the medical community very well. Asks how far a physician is expected to go to provide information to a patient.
315	Davis	Responds that this bill is not intended to "hold a hammer over the heads of doctors" or hold doctors liable for every decision a patient makes. The true intent of the bill is to allow the consumer an active role in the decision-making process.
331	Rep. Morrisette	Asks if standard language already exists that speaks to doctors making honest, good faith efforts to inform patients of options and procedures.
340	Davis	States that language may not be understandable. Supports language that would protect doctors who make a good faith effort to provide a patient with understandable definitions of their illness and possible treatments.

355	Nancy Bennett	American Cancer Society, submits and presents written testimony in support of HB 3164 (EXHIBIT D)
400	Teddy Deane	American Cancer Society Volunteer, submits and presents written testimony in support of HB 3164 and speaks of his survival of prostate cancer (EXHIBIT E).
TAPE 54, A		
010	Deane	Explains that people of older generations were trained to do what the doctor orders. States that he attends cancer survival support groups where he hears people say "If I only knew then what I know now!" Believes this kind of statement can be avoided with broader informed consent requirements.
040	Dr. Phil Leveque	Osteopathic Physician, Molalla, testifies in support of HB 3164. Explains that discussions he had with Art Biggs changed his mind about the need for additional informed consent requirements. Although he believes that physicians believe in the Hippocratic Oath, he would like to see doctors engage in more thorough consultations with their patients. Discusses the spinal cord damage he received during prostate cancer surgery.
090	Bob Joondeph	Director, Oregon Advocacy Center, submits and presents written testimony in regard to HB 3164 (EXHIBIT F). Submits to the committee possible improvements to the bill.
110	Winters	Asks if the bill covers the situation of a patient holding a doctor liable for not providing enough information.
115	Joondeph	Responds that there is always the possibility that a patient will hold a doctor liable for inadequacies in treatment. Does not believe that the bill changes the potential for liability charges as opposed to existing law.
138	Scott Gallant	Oregon Medical Association, submits and presents written testimony in opposition to HB 3164 (EXHIBIT G). Introduces Tom Cooney as the lawyer who drafted the existing informed consent statute, written in 1977. Refers to EXHIBIT G, page 3, and states that ORS 677.097 requires physicians to provide patients with information in the same manner that previous witnesses have proposed is so necessary in HB 3164.
187	Rep. Morrisette	Asks what is meant in ORS 677.097 by "unless to do so would be materially detrimental to the patient." Asks if this is an "open door" for physicians to keep information from a patient.
194	Tom Cooney	Counsel, Oregon Medical Association (OMA), testifies in opposition to HB 3164. Explains that statute states that a physician has the legal right to withhold information from a patient if he or she determines the sharing of said information will be medically detrimental to the patient. States that this legislation was authored by the Oregon Trial Lawyers Association and not the medical community. Explains that doctors rarely withhold information for fear of detrimental effects. Explains that he teaches a legal course to doctors and warns

		<p>them against using this statute as a means to keep information from a patient unless they have conclusive proof that a patient is unstable to the point of being "detrimentally" affected by information. Explains that in 1965, the Supreme Court decided that the standard of information that doctors gave their patients was sufficient. This changed in 1971 when the Supreme Court decided that information from doctors was a matter of "legal requirement." States that existing law requires doctors to explain the risks attached to medical procedures and alternatives to treatments.</p>
230	Cooney	<p>Explains that the OMA started receiving feedback from physicians that the practice of telling patients that "they might die," "they might bleed to death," and "they might be paralyzed" was bad medical practice. States that out of dialogues that occurred regarding the issue of informed consent, the 1977 statute was drafted and then analyzed and passed by the Oregon legislature. Points out that statute requires verbal explanations and not written documentation which has the potential for creating confusion.</p>
265	Cooney	<p>Discusses existing informed consent practices using the Procedures, Alternatives, and Risks (PAR) notation in a patient's medical file. Believes that patients should be given the choice as to how much detail they want to be exposed to regarding their condition and the details of possible treatments. Discusses his concern regarding the use of "universal" consent and disclosure forms.</p>
308	Cooney	<p>States that HB 3164 does create liability issues should a doctor use the universal consent form and leave out a portion of information.</p>
326	Rep. Morrisette	<p>Asks what happens if a patient believes in homeopathic medicine and decides that a doctor has not adequately informed him or her of all possible alternatives.</p>
330	Cooney	<p>States that HB 3164 speaks to "viable" alternatives that might include homeopathic medicine. Explains that even though a doctor might not consider a homeopathic treatment as "viable," if it is not included on the universal consent form, a physician might be held liable. Discusses the bill's requirement for doctors to inform patients of experimental procedures and his concern that this requirement does not have a geographic limit. Explains his concern that while current statute requires a doctor to explain the "procedure" of treatments, HB 3164 requires a doctor to explain the "nature" and "character" of treatments.</p>
365	Cooney	<p>Refers to HB 3194, section 2(1)(d), and section 4(3)(d). Explains that these sections mandate disclosures of risks that could be problematic and confusing.</p>
393	Rep. Lehman	<p>Asks who is advocating for this legislation.</p>
397	Gallant	<p>Explains that Art Biggs was the original proponent of expanded informed consent laws with legislation he introduced during the 1997 session. Believes that Mr. Biggs was involved in meetings with other patient advocacy groups asking for support of HB 3164.</p>
410	Rep. Lehman	<p>Comments that organizations like the American Cancer Society and Campaign for Patient Rights are mostly patient advocate groups pushing for this bill.</p>

416	Gallant	States that this hearing was the first time he was aware of the Cancer Society's support.
422	Rep. Lehman	Comments that what he is hearing from opponents is "Trust us, we know what we are doing." "You don't need this language, it really won't make a difference anyway." Wonders if he is missing something.
439	Cooney	Replies that the 1977 statute was written to give patients the choice of how much detail they wanted to be given. Believes that putting detailed risks in written form will create more problems than it will help. Asks the questions "Who is going to read and understand them?" "Are physicians expected to rely on written forms to take the place of verbal consultations?" States that written consent forms, existing in hospitals, are signed everyday without being fully understood.
TAPE 53, B		
005	Cooney	States that universal forms, required by the bill, will not create the better system that is desired.
035	Gallant	States that current law is sufficient. This bill will not improve medical care quality. Discusses his own experience of facing back surgery and alternative treatments suggested by his physician.
080	Gallant	Explains that the treatment options available to patients will vary so greatly that the possibility of one universal consent form is not likely to be practical. Reports that Ed Patterson from the Oregon Association of Hospitals and Health Systems opposes HB 3194 and that Bruce Bishop from Kaiser Permanente has serious concerns about the bill.
102	Rep. Winters	Asks if Cooney interprets treatments to include the dispensing of drugs.
105	Cooney	Responds affirmatively.
107	Rep. Winters	Asks if HB 3164 would require additional medical staff to keep doctors informed of all new medications, experimental procedures, and up to date treatments.
109	Cooney	Responds affirmatively. States that the need for full-time lawyers, drafting and updating consent forms, is only a part of the administration HB 3164 will require.
116	Rep. Krummel	Asks if this bill is more of an enforcement issue. Asks if the Board of Medical Examiners (BME) should be looking at this issue and slapping the hands of doctors who are not adequately informing their patients.
123	Cooney	Provides the committee with three remedies for the patient who feels that he or she was not adequately informed:

		<ul style="list-style-type: none"> • Consult with counsel. • Report violations to BME. • Report to medical societies.
135	Rep. Krummel	Asks if the possibility of death should be on the consent form.
147	Cooney	Responds affirmatively. States that this is why the bill is too broad and a universal form is not practical.
156	Rep. Morrisette	Asks about language regarding "good faith efforts" to cover the attempt of a doctor to inform patients.
162	Cooney	Responds that he has always been troubled by language of "good faith" immunities. Does not like the implication that "bad faith" is ever possible and must be watched for. Explains that if the most recent consent form has not reached a doctor, it's possible to release him from liability. States that he disagrees with the concept that a form can take the place of a face-to-face consultation.
176	Rep. Morrisette	Asks if language should be added releasing a doctor from liability for not disclosing a treatment that he or she does not believe is viable or worthy of making any difference to the patient.
182	Cooney	States that the portion of the consent form asking for treatments that the doctor does not feel are viable could be eliminated. Removing language regarding alternative treatments could work against the intent of the bill and proponents' goals.
188	Rep. Taylor	Reminds the committee that HB 3164 is not intended to protect doctors from liability of inadequate consent. Explains that patients are looking for information. States that the bill's intent is about providing patients with information regarding the condition of their health, the treatments that are available, and the risks and side effects of those procedures.
219	Cooney	Concurs and states that a universal consent form, that must be used to inform all patients, will not work because there is so much variance in treatments and levels of health.
240	Gallant	Responds that providing information to patients is very important and required by law.
253	Rep. Krummel	Asks if this bill would pertain to all providers. Believes that information regarding benefits of treatments are as valuable as informing patients of risks of treatments. Notes that there is a great deal of information on the Internet. States that he would hate to see a form get in the way of the two-way communication between doctors and their patients.
296	Gallant	Responds that the bill applies to medical doctors, doctors of osteopathy, and

		podiatrists.
300	Rep. Winters	Asks if the bill applies to alternative health care providers.
303	Cooney	The bill applies to physicians licensed under the Medical Practice Act in ORS 677.
310	Rep. Piercy	Asks if Cooney has talked with medical associations from Washington state regarding their informed consent laws.
317	Cooney	Responds affirmatively. Explains that Washington physicians he has talked with told him they ignore the consent form and sit down with patients in a consultation setting.
322	Rep. Piercy	States that the Washington consent form is permissive and not required to be used by physicians.
328	Cooney	Responds that the problem with HB 3164 is that, although the consent form is voluntary, the burden of proof that information was shared rests with the doctor.
330	Rep. Piercy	Comments that, if this bill is not the best vehicle for making physicians more responsible regarding informed consent issues, then her concerns focus on the serious complaints the proponents have brought forward, that doctors are not giving patients enough information to make life- changing decisions regarding medical treatments and procedures.
342	Cooney	Responds that there are documented cases of patients honestly reporting that their doctor did not provide them with information that tape recordings revealed they had been told. States that it is often not the doctor who is negligent in the sharing of information.
364	Rep. Piercy	Comments that this is the very reason why informed consent and information regarding treatments need to be in writing.
373	Cooney	Responds that the way the bill is written, it will be very difficult to create universal information that all patients will understand. Wonders if information is better in writing, or if people get a better handle on their situation when they engage in a verbal conference with their doctor.
385	Bruce Bishop	Northwest Kaiser Permanente, testifies in opposition to HB 3164. Concurs with the testimony of Mr. Cooney and Mr. Gallant. States that mandating forms will "frustrate" communication between doctor and patient.
TAPE 54, B		

002	Tina Kitchin, MD	<p>Medical Director, Developmental Disabilities Services for Mental Health and Developmental Disabilities Services Division (MHDDSD), testifies in regard to HB 3164. Refers to HB 3164, section 3(2), and states that this section can be interpreted in two ways.</p> <ol style="list-style-type: none"> 1. There are three conditions where consent is implied. 2. There are three situations that must exist before consent can be implied. <p>Concurs with the written testimony, EXHIBIT F, of Mr. Joondeph regarding an advanced directive.</p>
018	Dr. Euan Horniman	<p>Physician, testifies in support of HB 3164. States that his experience with patients leads him to believe that they like the status quo. Believes that patients are better educated. States that this bill is about communication between a doctor and a patient and in no way seeks to replace verbal communication. States that written documentation regarding treatments discussed with patients is the best way for patients to formulate questions later. Believes that the bill is more protective of doctors being held liable.</p>
058	Ellen Pinney	<p>Oregon Health Action Campaign, testifies in support of HB 3164. States that patients must be informed of treatment risks and side effects. Reads a letter to the editor, written by Art Biggs, on the need for expanded informed consent. Refers to HB 3164, page 2, lines 11-14, and states that alternatives are available for following a universal informed consent form. States that section 1 of the bill defines medically recognized procedures. Explains that medical doctors will not be expected to fully understand the homeopathic profession. Encourages the committee to work out the "glitches" in the bill and pass it on to the House floor.</p>
112	Chair Kruse	<p>Closes the public hearing on HB 3164 and opens a public hearing on HB 2008.</p>
<u>HB 2008 PUBLIC HEARING</u>		
122	Rep. Dan Gardner	<p>House District 13, submits and presents written testimony in support of HB 2008 (EXHIBIT G).</p>
143	Mary Botkin	<p>American Federation of State, County, and Municipal Employees (AFSCME), submits written testimony (EXHIBIT H) in support of HB 2008. Explains that there are some mentally-ill people exhibiting the same violent or deviant behaviors that criminal offenders exhibit, but these people are not recorded in the state's system. States that these people fall through the cracks of the Sexual Predator Notification Act (SPNA). Discusses the closure of Fairview Training Center by stating that the state "has eliminated its non-criminal justice placement option." Explains that HB 2008 puts into statute similar notification procedures as SPNA for the mentally ill. States that the difference in HB 2008 is it does not release the name of mentally-ill "residents." Explains that it is important to remember that mentally-ill individuals, exhibiting violent or socially deviant behavior, have not been convicted, and are not guilty of anything at this point. HB 2008 seeks to eliminate "surprises" for neighborhoods. Reports that the bill does not violate client confidentiality.</p>
200	Botkin	<p>States that HB 2008 does not violate confidentiality or stop placement, it does not stop the closing of Fairview, and it does expose clients to personal</p>

		community outrage. States that HB 2008 gives communities a chance to be involved in the process of placing mentally-ill people within their confines.
222	Rep. Piercy	Asks Rep. Gardner for additional information regarding the situation in his community.
225	Rep. Gardner	Discusses the placement of a group home in his neighborhood. Explains that the home could not guarantee that there were no sexually-dangerous individuals living there. States that the neighborhood was very concerned about safety. Explains that part of the agreement his neighborhood association reached with the home was the release of names of individuals with dangerous behavioral histories. Reminds the committee that releasing names is not a component in the bill.
247	Rep. Winters	Supports the bill and commends Rep. Gardner for his efforts.
261	Rep. Taylor	Comments that she is "less enthusiastic" about the bill. States that group homes are difficult to place. Comments that it is difficult to define "sexually dangerous" individuals within the mentally-disabled community. States that mentally disabled persons sometimes exhibit behaviors that are misconstrued as dangerous, when in reality, they are different, or at the very worst, inappropriate. Asks how one can be sure that this bill will not throw up a barrier to placing needed community-based facilities.
293	Rep. Gardner	Responds that he does not want to put up barriers against the placements of group homes. States that "sexually dangerous" is currently defined in statute. Explains that this bill does not affect most individuals in the mentally-disabled community.
311	Rep. Morrisette	Comments that this bill does not give comfort to communities. States that he is not certain if the bill is aiding or preventing group homes from locating in communities. Believes that the bill will "scare" neighborhoods into action.
333	Botkin	Discusses her conclusions of releasing mentally-disabled persons into communities. Communities need to be included in the decisions regarding their populations. States that providing information is most important to preventing surprises.
368	Rep. Taylor	States that communities need to be made aware that individuals in group homes are supervised by skilled staff.
390	Barry S. Kast	Administrator, Mental Health and Developmental Disability Services Division (MHDDSD), submits and presents written testimony in opposition to HB 2008 (EXHIBIT I).
TAPE 55, A		
010	Kast	Refers to EXHIBIT I, page 1, and discusses the agency's use of the definition of

		"sexually dangerous." States that this legislation may be discriminatory as it sets out to create a class of people without going through due process. Discusses the misconceptions that this bill will foster in neighborhoods where citizens are ignorant of mentally-ill individuals.
057	Chair Kruse	Asks if there are no sexually dangerous persons at Fairview.
060	Kast	Responds affirmatively. Persons exhibiting inappropriate sexual behavior are living in state-run group homes, supervised by trained staff.
070	James Toews	Assistant Administrator, Developmental Disabilities Services, MHDDSD, testifies in opposition to HB 2008. Concurs with AFSCME that, in the past, Fairview was used as a repository for sexually- inappropriate, mentally-ill individuals. Beginning in the late 1980s the state stopped this practice Discusses changes implemented in the system of mental health that supported the adjudication of "sexually dangerous" persons regardless of mental illness. Discusses the Federal Fair Housing Law by stating that suspect groups cannot be targeted. Explains that notification will have to be handled by the state group home. States that federal law prohibits the state from taking on this action.
132	Rep. Winters	Asks about current practice when a state group home is being placed in a community or when the population of the group home is changing.
137	Toews	Responds that federal law dictates how communities will be notified or if notification is lawful.
149	Rep. Winters	Asks if individuals entering group homes are still under the care of the state.
150	Toews	Responds affirmatively.
151	Chair Kruse	Closes the public hearing on HB 2008 and opens a public hearing on HB 3030.
<u>HB 3030 PUBLIC HEARING</u>		
170	Laurie Marzell	Naturopathic Physician, Naturopathic Medical Education Institute (NMEI), Board Member, Naturopathic Examiners Board, submits and presents written testimony and proposed amendments to HB 3030 (EXHIBIT J).
225	Marzell	Refers to EXHIBIT J, page 4, and discusses the amendment proposed by NMEI.
250	Margo Abshier	Naturopathic Physician, testifies in support of HB 3030 and discusses confusing language in statute that this bill will clarify.
273	Chair Kruse	Closes the public hearing on HB 3030 and adjourns the meeting at 3:15 P.M.

Submitted By, Reviewed By,

Diane M. Lewis, Janet L. Carlson,
Administrative Support Administrator

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EXHIBIT SUMMARY

A ñ HB 3164-1 amendments dated 3/23/99, Rep. Max Williams, 1 p.

B ñ HB 3164 written testimony in support, Pat Biggs, 7 pp.

C ñ HB 3164 written testimony in support, James Davis, 2 pp.

D ñ HB 3164 written testimony in support, Nancy Bennett, 2 pp.

E ñ HB 3164 written testimony in support, Teddy Dean, 1 p.

F ñ HB 3164 written testimony in opposition, Bob Joondeph, 1 p.

G ñ HB 3164 written testimony in opposition, Scott Gallant, 9 pp.

H ñ HB 2008 written testimony in support, Rep. Dan Gardner, 2 pp.

I ñ HB 2008 written information in support, Mary Botkin, 7 pp.

J ñ HB 2008 written testimony in opposition, Barry Kast, 2 pp.

K ñ HB 3030 written testimony in support, Laurie Marzell, 4 pp.