

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL AND JUDICIAL ADMINISTRATION

Hearing Room
Tapes - 27

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

Public hearing on HB 2300
Public hearing on HB 2533
Public hearing on HB 2493

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004 CHAIR PARKS: Convenes meeting at 10:06 A.M.

OPENS the PUBLIC HEARING on HB 2493

009 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Testimony on HB 2493.
Submits [EXHIBIT A,B, & C]. Discusses disciplinary action.

020 CHAIR PARKS: Why shouldn't we, as a legislature, try and examine that at the times we meet?

026 GALLANT: I think a concerted review of whether or not boards are appropriately and accurately meeting their requirements should be done.

033 CHAIR PARKS: How are we going to do that, within this area, if we don't have access to what the complaints were and what they did by way of investigation?

038 GALLANT: Gives example.

046 CHAIR PARKS: Could you give me another example of where the legislature gives to the executive an obligation to oversee and keep it secret from the legislature?

052 GALLANT: Your beginning on the premise that we have an extensive conspiracy of people who are trying to do the public harm.

056 CHAIR PARKS: I don't think that is true, but I do think there is a serious problem. Gives example.

062 GALLANT: What I am trying to do is figure out a reasonable way, without having very sensitive information spread before the public, that is medically related.

069 CHAIR PARKS: I invite you to submit amendments to accomplish that.

076 GALLANT: You have a copy of the first suggestion that I brought up. I will be happy to distribute that to the committee.

087 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: Testimony on HB 2300.

129 CHAIR PARKS: We will form a work group and we will get in touch with you.

132 GALLANT: I was notified yesterday at 4:45 p.m. that I could submit amendments.

139 CHAIR PARKS: You may have until next Wednesday to provide the committee with those amendments.

144 GALLANT: I am really trying to cooperate. I am trying to go through some of the sections to explain what we view this process is suggesting.

154 CHAIR PARKS: How would you deal with your objective?

156 GALLANT: If in fact we are going to open up this process, that you bifurcate the system.

171 CHAIR PARKS: After it is known to the public?

174 GALLANT: I'm assuming they will be notified in an investigatory process.

184 CHAIR PARKS: The objection was to the nonconfidentiality of the complaining witness. How would you deal with that, would you make the complaining witness give them absolute confidentiality?

191 GALLANT: That has been the policy of this state at least for the last 20 years.

194 CHAIR PARKS: The policy of the state, or the policy of the medical board?

195 GALLANT: The policy of the state statute, which I assume is the policy of the legislature.

197 CHAIR PARKS: As it pertains to you?

199 GALLANT: And a number of other boards as well.

202 CHAIR PARKS: The investigatory stage is confidential, and then after the investigation, the records are open?

207 GALLANT: The investigatory records are not open to the public at all. What is available to the public is a final determination.

215 CHAIR PARKS: Is the identity of the complaining party ever known?

217 GALLANT: If you go to a contested case hearing it is.

219 CHAIR PARKS: Is a contested case hearing a closed hearing?

220 GALLANT: Not a contested case hearing.

232 KATHLEEN HALEY, EXECUTIVE DIRECTOR, BOARD OF MEDICAL EXAMINERS: Testimony on HB 2493. Submits [EXHIBIT D].

244 CHAIR PARKS: Referring to [EXHIBIT D], I think you're wrong. When the complaint comes to the bar through the insurance carrier, the bar may exempt the disclosure.

256 HANEY: I put that in based on conversations with Jeff Sapiro of the disciplinary section of the bar.

260 CHAIR PARKS: Is the complainant ever known to the public, generally?

268 HANEY: The complainant's identity comes out at the contested case hearing stage.

270 CHAIR PARKS: So if I wanted to go and be a nosy member of the public, I could go to the contested hearing?

273 HANEY: No, that is not open to the public. The identity of the complainant becomes known to the person who is being complained about.

275 CHAIR PARKS: Do you mean the doctor does not know who the complainant is until he gets to the hearing?

276 GALLANT: The intent of keeping the complainants name confidential is to encourage

complaints.

296 CHAIR PARKS: You want to do what you did before and it didn't work.

306 GALLANT: I would hope that in most instances, that one circumstance
does not make
a whole process bad.

308 CHAIR PARKS: I agree with you, and I think that is the danger of
making public policy
based on one circumstance.

312 GALLANT: There have already been recommendations made for
administrative procedural changes by the previous governor.

320 CHAIR PARKS: Tell me what the governor told you to do and what you did
about it.

333 HANEY: I do not have the governor's report with me, but I can tell you
what the board has been doing. It is a bad idea to make public policy on
one such extreme case.

389 CHAIR PARKS: Referring to lawsuits, you have absolute immunity under
the statutes.

391 HANEY: I was able to reassure him of that. Gives examples of other
cases.

436 HANEY: Discusses costs.

TAPE 27, A

030 GALLANT: Discusses appeals process and peer review.

049 CHAIR PARKS: Where in the bill does it say that peer review will be
available?

052 GALLANT: Page 4, line 4, that any person who is giving information or
testimony in
connection to a board, that they are protected from any civil liability.

065 CHAIR PARKS: I thought the inclusion was to accomplish what you say it
won't accomplish.

067 GALLANT: The Board of Medical Examiners does not do peer review.

070 CHAIR PARKS: You should address that in your amendments. Peer review
is a good system.

075 GALLANT: That is an area of concern. I will submit some amendments
to you before
next Wednesday.

081 CHAIR PARKS: I would like a report on the number of instances in which
the attorney general

has provided legal opinion, under chapter 192 of the Oregon Revised Statutes.

086 LEWIS LITTLEHOUSE, PROGRAM EXECUTIVE, INSURANCE DIVISION,
 DEPARTMENT of CONSUMER and BUSINESS SERVICES: Testimony on HB 2493.
Submits [EXHIBITS E & F].

143 CHAIR PARKS: What is the procedure you have now?

148 LITTLEHOUSE: Referring to investigatory files, they are forever
confidential.

152 CHAIR PARKS: Is the complaining witness always confidential?

157 LITTLEHOUSE: Yes.

161 CHAIR PARKS: So if an insurance agent was accused by a competitor,
that would be
 confidential?

163 LITTLEHOUSE: Yes.

164 CHAIR PARKS: Even though I would like to know if this person is an
enemy or a competitor
 of my insurance agent in evaluating whether or not that was a valid claim,
that is still confidential?

166 LITTLEHOUSE: Yes.

168 CHAIR PARKS: Do you recognize that confidentiality works both ways?

170 LITTLEHOUSE: Gives example.

174 CHAIR PARKS: We have a variation of opinions here.

183 REP. TIERNAN: Regarding confidentiality of the person who files the
complaint, is there any
 time in the process where that persons name is made public?

191 LITTLEHOUSE: It would come out if there was a contested case, because
it would be in the
 record and perhaps in the final order.

195 CHAIR PARKS: Could we go to the contested case hearing if we chose to?

198 LITTLEHOUSE: I don't believe those are open.

205 CHAIR PARKS: Discusses insurance companies.

207 LITTLEHOUSE: Your bill effects agents, adjusters and consultants.

217 CHAIR PARKS: What is a third party administrator?

220 LITTLEHOUSE: They are intermediaries between health and life
insurers. They do underwriting and handle claims.

222 DR. BERT TEAMEY, DENTIST: Testimony on HB 2493. Submits [EXHIBIT G].

300 DR. TEAMEY: The Board of Dentistry has no provisions for individual
dentists to address
the board.

325 CHAIR PARKS: One of the things included in the bill is a specific
provision that deals with
this issue.

338 DR. TEAMEY: Referring to [EXHIBIT G], this is meant to be a trail for
you to look at.

CLOSES the PUBLIC HEARING on HB 2493
OPENS the PUBLIC HEARING on HB 2533 and HB 2300

400 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Testimony on HB 2533 and
HB 2300. Submits [EXHIBIT H], for Kelley Hagen.

428 ED PATTERSON, OREGON ASSOCIATION OF HOSPITALS: Testimony on HB 2533.
Submits [EXHIBIT I]. Discusses forming a work group.

TAPE 26, B

040 SEIJI T. SHIRATORI, GOVERNMENT RELATIONS CONSULTANT: Testimony on
HB 2300. We would like to be included in the work group.

055 CHAIR PARKS: You will certainly be included in the work group. Mr.
Gallant will be in
charge of scheduling the meeting. We will come back on this bill in a
couple of weeks to see where you're at. With nothing further from the
committee the meeting is adjourned at
11:10 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth
Committee Assistant

Debra Johnson
Committee Coordinator

EXHIBIT SUMMARY:

- A - Summary of HB 2300 - Gallant - 3 pages
- B - Requirements for state action - HB 2300 - Gallant - 1 page
- C - Survey - HB 2300 - Gallant - 4 pages
- D - Fact sheet - HB 2493 - Haley - 1 page
- E - Testimony - HB 2493 - Littlehouse - 2 pages
- F - Amendments - HB 2493 - Littlehouse - 2 pages
- G - Testimony - HB 2493 - Teamey - 31 pages
- H - Summary - HB 2300 - Hagan - 11 pages
- I - Provider collaboration - HB 2533 - Patterson - 1 page