

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

March 1, 1995 Hearing Room 357
10:00 am Tapes 30-31

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
Sarah May, Committee Assistant

MEASURES HEARD:

HB 2493- Public Hearing and Possible Work
Session

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 30, SIDE A

001 CHAIR PARKS: Calls the meeting to order at 10:14 am

PUBLIC HEARING ON HB 2493

HB 2493 requires that certain disciplinary proceedings of professional
licensing boards be public, including records. (EXHIBITS A, B, C, D)

Witnesses: Terry Evans, Self

Al Thompson, Standard Insurance Company

Jack Munro, American Insurance Association and the Independent Insurance

Agents

of Oregon

Larry Culbertson, Insurance Division

David Myton, Teachers Standards and Practice Committee

John Gambee, Self

Karen Chapin, Self

Pam Hoffine, Self

Jack Sollis, Self

These minutes were corrected 11/09/95.

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Jane Myers, Oregon Dental Association

Kathleen Haley, Executive Director, Oregon Board of Medical Examiners

005 TERRY EVANS, SELF: Testifies in opposition to HB 2493. Feels the bill
could allow the

Board of Medical Examiners to operate in greater secrecy.

025 CHAIR PARKS: Clarifies intent of bill for audience. This bill opens up
medical records and
gives the public greater access.

029 EVANS: It is my understanding that the bill places the burden on the
public to have access to that
information.

032 CHAIR PARKS: We need to get you a copy of the bill. You are certainly
welcome to submit

written comments after you have read it.

039 CHAIR PARKS: You have a child that has a medical condition?

040 EVANS: Yes.

041 CHAIR PARKS: Does your testimony regarding your child's medical
condition?

041 EVANS: Yes.

042 CHAIR PARKS: Do you feel that your family has suffered because you could not get information about people that treat medical conditions?

045 EVANS: Not specifically. I want the burden to be placed on the Board of Medical Records to show the need for privacy rather than on the citizen. Admitted that he misunderstood the bill but will read it and submit any further testimony in writing to Chair Parks and the Committee.

056 AL THOMPSON, STANDARD INSURANCE COMPANY: Testifies in opposition to HB 2493. He is in opposition to Sections 37 and 38.

063 CHAIR PARKS: Cites pages of concern by Mr. Thompson. On page 13-14, section 37 deals with individuals and section 38 deals with companies? It is in not my intention to include companies. I will review section 38 and if by chance I change my mind, I will let you know.

076 THOMPSON: The insurance department testified and submitted proposed amendments, we do support those amendments.

079 CHAIR PARKS: We'll consider that.

084 JACK MUNRO, AMERICAN INSURANCE ASSOCIATION & THE INDEPENDENT INSURANCE AGENTS OF OREGON: Testifies in support to HB 2493-1 amendments. Discusses sections 37 and 38 of bill and provisions. The bill really offers a one-size-fits-all solution to problems that related to some boards and cases that they have handled.

109 CHAIR PARKS: What sections are you talking about?

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110 MUNRO: Sections 3-9 of bill. Continues with testimony.

150 CHAIR PARKS: Discusses situation of complaints where an insurance company won't pay. The person that handles this situation might say that it is not the agent's fault, but that it just may not be included under the policy?

159 MUNRO: I don't know if they give them that advice. In most cases, they take down the information and call the agent or the company in attempt to resolve the issue.

167 CHAIR PARKS: Is there some mechanism to remedy the situation?

173 MUNRO: The complaints are handled in a variety of ways. Explains.

180 CHAIR PARKS: Sometimes there is a lot of misunderstanding. Is it a coverage question or adjuster problem and what does the insurance department do? Do they log complaints?

191 LARRY CULBERTSON, INSURANCE DIVISION: Our first goal is to solve the problem.

Explains.

200 CHAIR PARKS: Do you open a file up after the complaint is made on an agent?

202 CULBERTSON: Yes, sometimes. We have to perceive if it is an informational call or not.

Clarifies.

210 CHAIR PARKS: Gives example of a person wanting more money because of the unclarity of policy. Is that a complaint, and if so what do you do with that?

214 CULBERTSON: If you suggest that the agent didn't represent the product that he sold to a

217 CHAIR PARKS: That would be treated as a potential misrepresentation of a policy. person, then we would deal with that as a complaint against an agent.

218 CULBERTSON: Our first goal is to figure out how to get them the money
they think they deserve. Insurance companies have to justify their reasoning.
224 CHAIR PARKS: Do you then ask the insurance company their side of the
story and ask them about their policies? What happens if you conclude that the insurance
company is right? CULBERTSON: We would then tell the complainant that the insurance
227 company has done a market search and established what the market value of the car might be.
Explains how they discuss this with the complainant.
235 CHAIR PARKS: What do you do if someone else calls and asks about the
agent who has been misrepresenting people, but you know that it is not the agent's fault?
240 CULBERTSON: Under current statute, we say that we can't tell them.

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242 CHAIR PARKS: If an agent has been accused by someone, the government
possess the information that the agent was right in their findings and is
obligated to tell the citizen. You don't want insurance agents to have that
information? That is what I don't understand.

247 MUNRO: The division publishes a two volume right now for companies and
their work, explains and discusses what volumes are. If the same thing were
true of agents, it would be of value to publish that information. Discusses
example case of medical related problem.

285 CHAIR PARKS: Doesn't the complainant control what information they
chooses to give you?
285 MUNRO: Right now that information is confidential. There is a difference
between providing information and information that is provided too early that might not be
accurate.

296 CULBERTSON: Citizens for the most part don't give us information with
the understanding that it is confidential. A sign)ficant number of consumers have very personal
problems. If the consumer knew that information might be available to the general public,
they wouldn't come to us for help.

310 CHAIR PARKS: How many case files actually come to a position where you
investigate them?

314 CULBERTSON: In the Consumer Service and Enforcement Section, the
complaint resolution had 5,000 files and the investigation section had 100 files. If there is an
appearance of a violation

of law, we get the investigation people involved.

328 CHAIR PARKS: What is 100 out of 5,000?

332 MUNRO: Two percent.

333 CHAIR PARKS: This bill is designed to do more than to give consumers
information. It is my philosophy that if the State of Oregon thinks that it is important enough
to regulate this profession,

then there is something going on that the legislature and the people have a
right to know about.
If

we find that we need to regulate this situation, that is our job, but we

give it to you to regulate
through a set of statutes. How are we going to know if you are doing your
job, if we don't know
what you choose not to investigate?

360 1\IUNRO: Not all situations and process are identical. In resolving
things in the judicial world,
we recognize certain distinctions that might make something more
appropriate for small claims
court than some other proceeding. As it might relate to this instance,
there are a number of
ways
to determine if the department is doing their job. Those options range from
consumer
complaints
to a thoughtful examination of that entity's activities. I'm not sure the
solution is found by
making
information available to the public.

388 CHAIR PARKS: That is the problem. What about the other 4,900 cases that
weren't
investigated? Yet, you then say that the information is private?

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395 REP. NAITO: What about if 4,000 of those complaints are against one
person, yet the claims
are fairly insignificant and the complainants don't want to waste their
time worrying about it. If
they knew about each other, then they might make a complaint.

409 MUNRO: Depending upon how you state the problem, at least in the case of
companies, that
information is maintained. If we have a data gathering problem, then we may
need a data
collection solution. I have no problems with the objectives generally set
out in Section 2.
Explains.

435 CHAIR PARKS: The other thing is that you assumed I was discussing the
Board of Medical
Examiners. I wasn't.

TAPE 31, SIDE A

008 MUNRO: I didn't say that. I said that I was not familiar with the Board
of Medical Examiners process or cases.

010 CHAIR PARKS: That had nothing to do with the Board of Medical Examiners
and they are
getting a bum rap just for the way the system is structured.

013 REP. BROWN: I'm hearing two things. One is that you think you are
different and think you
should be left out of the statute, and two that you are concerned about the
personal nature of the
calls. I'm not hearing why your group should be exempted from this process.
If we give the
complainant confidentiality, would that resolve your concerns?

022 MUNRO: We have a process that is working and we need to be careful about
changing it. The
process that is set up in the bill is going to impose a cost on the people
it will effect. Gives
examples of how this bill will work throughout a full complaint. It isn't
clear to me what options
I might have to appeal the accusations that were made against me, as an
agent.

047 REP. BROWN: How does that differ in your industry from a doctor who
might make a complaint against another doctor?

049 MUNRO: I don't know, there may be none. At this point of time, this is a
call about a coverage problem that might in some way relate to me. There are number of questions
that are raised by this process.

066 CULBERTSON: Our records aren't any different than anyone else's. But
there is a misperception when we discuss complaint resolution files. We have done
something to speed up the process, writing letters costs too much money and takes too much time.
Out of those files last year, 1,000 of those were done over the telephone without any written
information. Gives example of complaint resolution file and how it is dealt with.

087 (Committee reviews proposed amendments from David Myton.)

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117 DAVID MYTON, TEACHER STANDARDS AND PRACTICE COMMITTEE: Felt there was
ambiguity in Section 4 with, "...pending a decision..." and children under
the age of 16 who would be required to testify in a public heraing
regarding issues that would be embarassing to them and of a personal
nature, especially involving sexual abuse. Test)files and submits proposed
amendments. (EXHIBIT E)

149 MYTON: Continues testimony.

187 MYTON: Continues testimony.

213 JOHN GAMBEE: Test)files and submits written testimony in support of HB
2493. (EXHIBIT E)

257 GAMBEE: Continues testimony.

283 CHAIR PARKS: Are you a physician?

284 GAMBEE: No.

285 CHAIR PARKS: When was your license revoked?

286 GAMBEE: December 31, 1994.

287 CHAIR PARKS: How long did the process take for them to take your license
away?

288 GAMBEE: This particular investigation started in 1991.

291 CHAIR PARKS: It took three years for the board to take your license
away? What were the findings? They took your license away because you were a danger to the
public?

295 GAMBEE: That is what they said. There were no patient complaints and the
board never

demonstrated that anyone was harmed or that anyone was in the risk of harm.

298 CHAIR PARKS: Did you get to see the file that they have?

298 GAMBEE: Only after they revoked my license.

299 CHAIR PARKS: You can see the file after the decision is made? You are so
dangerous that

How many patients did they took your license away, but it takes them three years to decide that?
you treat in those three years.
305 GAMBEE: Thirty or forty would come through the office a day, but I would
only see about eight of those.
307 CHAIR PARKS: Possibly ten thousand then?
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314 REP. NAITO: Do you disagree with the decision of the board about your ability to practice?

316 GAMBEE: Yes, very vigorously.

317 REP. NAITO: What are your options now?

318 GAMBEE: If I don't go bankrupt first, I can go through the appeal process which takes a great deal of time and money. It is only through the generosity of my patients that I can continue to fight it.
323 REP. NAITO: You weren't aware of the nature of the complaint?
324 GAMBEE: Yes, I was aware and I agreed to all of the conditions that they set out except the monitoring of my office and the reviewing of charts on a regular basis. There was no substantial evidence for that type of disciplinary procedure.
333 REP. JOHNSTON: Your revocation is characterized as an alternative practice reputation?

337 GAMBEE: My reputation is that.

338 REP. JOHNSTON: Because in the eyes of the BME and the complainant against you, your treatment modalities were unorthodox?
342 GAMBEE: The only real complainant was from Blue Cross.

344 REP. JOHNSTON: This is a question of the appropriateness of practice, not of wrong doing

on your part?
349 GAMBEE: Yes.
354 KAREN CHAPIN, SELF: Testifies in support of HB 2493.

400 CHAPIN: Continues testimony.

TAPE 30, SIDE B

036 REP. JOHNSTON: Assume that you were in search of a physician. If these files were available and this doctor had been accused but was found not guilty, would that make you less or more likely to accept the services of this physician?

047 CHAPIN: If they do something wrong, they are not subject to the law, but only to the board who abides by their administrative law. If I saw something on someone's record, I believe that people deserve a clean start, but unless they paid a price, I would be very leery of taking my family to that person.

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064 REP. JOHNSTON: If they have done nothing.

066 CHAPIN: You don't utilize anyone who is hurting the consumer.

069 CHAIR PARKS: If someone was charged but nothing came of it, would you go to that doctor?

077 CHAPIN: I would have to question the process under how that person was investigated.

087 PAM HOFFINE, SELF: Testifies and submits written testimony in support of HB 2493.

(EXHIBITS G, H)

122 HOFFINE: Continues testimony.

151 HOFFINE: Continues testimony.

177 CHAIR PARKS: Why did you give us Mark Kitzman's case?

178 HOFFINE: He was sexually molesting children in and out of practice.

185 CHAIR PARKS: Point being that he stayed in practice six months after they suspended his

license?

186 HOFFINE: Right, he was allowed to "give" his license up.

197 JACK SOLLIS, SELF: Testifies in support of HB 2493.

231 CHAIR PARKS: Do you work for this Attorney General here in Oregon?

233 SOLLIS: I work for five Attorney Generals, including Oregon.

234 CHAIR PARKS: Wouldn't this be discoverable information in a license revocation proceeding?

237 SOLLIS: Under this statute, it wouldn't be. This is a specific statute that would over rule the general statute.

240 CHAIR PARKS: I have an appointment with the Attorney General to talk about this bill.

244 SOLLIS: Continues with testimony.

247 CHAIR PARKS: Most individuals who are in the treatment programs, turn themselves into these programs. What incentive would they have, if we took the confidential nature of the treatment center out of this bill and made it a matter of public record?

255 SOLLIS: Shouldn't I know that a doctor I'm seeing is in a treatment program for drug addiction

and that his license has been revoked?

260 CHAIR PARKS: You have just stated how difficult the issue we are trying to decide.

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262 SOLLIS: It is especially in the field of medicine and other more responsible fields.

266 REP. BROWN: Would you make a distinction for a lawyer that is in treatment for an alcohol or drug program? Are you entitled to have that information as well as a client?

269 SOLLIS: It is just as important for a lawyer, because if you miss a

court date by one day, your case could be denied. You should be able to know that they have had various addictions. Continues with testimony.

295 REP. QUTUB: You are speaking for Dr. Gambee. What about someone who wants to file a complaint but maintain confidentiality? Are you taking into consideration that there may be

people that need to make a complaint, but keep it confidential?
311 SOLLIS: I don't have any problem from keeping it confidential from the public. But I do have a

problem with keeping it confidential from the doctor.
314 REP. QUTUB: The person you are complaining against should be able to know who is

. . .
complaining.

317 SOLLIS: You are getting into a situation where the complaint may not be valid.

319 REP. QUTUB: I am talking about a complaint that is valid.

321 SOLLIS: The board has to make a finding that there is clear and convincing evidence and reasons as to why to keep it confidential.

340 JANE MYERS, OREGON DENTAL ASSOCIATION: Testifies and submits written testimony

in opposition to HB 2493. (EXHIBIT I)

380 CHAIR PARKS: Did you get a copy of Dr. Temey's file?

381 MYERS: Yes. I prefer not to comment on that.

391 CHAIR PARKS: You don't have enough information to know if he was fairly or unfairly treated?

394 MYERS: I would rather look at the whole file and I'm not sure that what Dr. Temey gave you is the whole file.

407 KATHLEEN HALEY, EXECUTIVE DIRECTOR, OREGON BOARD OF MEDICAL EXAMINERS: Testifies in opposition to HB 2493. If an individual wants information about a

physician, I could give a print-out of what information is currently available on that physician. I

am not sure that has been made clear in this process. Invited Committee Members to attend an

OBME investigative review meeting on March 2, 1995.

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020 CHAIR PARKS: Adjourns the hearing at 11:40 AM.
Submitted by, Reviewed by,
Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Proposed Amendments to HB 2493 - Staff- 2 pages
- B. Testimony on HB 2493 - Oregon Medical Association - 1 page
- C. Proposed Amendments to HB 2493 - Staff- 1 page
- D. Testimony on HB 2493 - Staff - 7 pages
- E. Testimony on HB 2493 - David Myton - 3 pages
- F. Testimony on HB 2493 - John Gambee -,3 pages

- G. Testimony on HB 2493 - Pam Hoffne - 3 pages
- H. Testimony on HB 2493 - Pam Hoffne - 3 pages
- I. Testimony on HB 2493 - Jane Myers - 2 pages
- J. Testimony on HB 2493 - Bob Oleson - 31 pages

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