

SENATE COMMITTEE ON  
RULES AND ELECTIONS

Hearing Room  
Tapes -75

MEMBERS PRESENT: Sen. Randy Miller, Chair  
Sen. Paul Phillips, Vice-Chair  
Sen. Brady Adams  
Sen. Shirley Gold  
Sen. Dick Springer

STAFF PRESENT: Kristina McNitt, Committee Administrator  
Gretchen Haber, Committee Assistant

MEASURES HEARD: HB 2493: Public Hearing  
HB 2957: Public Hearing/Work Session  
HB 2494: Public Hearing/Work Session  
SB 184: 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 , SIDE A

003 CHAIR MILLER: Calls the meeting to order at 9:15 a.m. Reviews agenda.

HB 2493 - Public Hearing

Witnesses:

Ed Patterson, Oregon Association of :  
Scott Gallant, Oregon Medical Association:  
Bob Oleson, Oregon State Bar:, Director of Public Affairs  
Rick Griebel, Oregon State Bar;  
Jane Nass  
Michele Normand  
Laura Beeks Studevoss  
Les Zaitz, newspaper publisher  
Rep. Del Parks House District 53

020 REP PARKS: Testifies in favor of HB 2493.  
- The measure was developed by the Public Records Task Force from several years ago  
- When a false complaint is made to a regulatory board or commission, there is no way to tell whether it was a false complaint or a frivolous complaint, so it is assumed that the complaints were legitimate.  
- I became involved with this issue when the City of Klamath Falls were making secret settlements to complaintants. In 1991 we passed a law that prevented secret settlements. The agencies then said it would be a terrible thing to do, but that hasn't been the case. The law saved money and eliminated bad employees.  
- If it is important for us to know what goes on in disciplinary procedures

in a profession, then we have no business regulating the profession. The only way we can know if they are performing the oversight duties we give them is to know what they do with each individual case and make that judgement.

- There is no reason to send this bill to Ways and Means to die. The public has the right to know where the legislature stands on this issue.

102 LES ZAITZ testifies in favor of HB 2493.

- Participated in the Public Records Task Force created by the 1993 legislature. The 1993 Senate approved a similar version of the bill, but it died in the House.

- This is a consumer bill; it is designed to protect the people of Oregon who hire professionals.

- The measure would create consistency with regard to the amount of disclosure provided by licensing boards.

- Victims will have additional support with complaints, instead of feeling like the agencies are protecting their own.

- The Ways and Means Committee has addressed the budgetary concerns raised by the Board of Medical Examiners, and needs not go to that Committee. Also, agencies may charge a fee to recover all reasonable costs to comply with the Public Records Law.

181 SEN. PHILLIPS: How is someone protected from frivolous complaints?.

198 REP. PARKS: The board can make findings that a complantant is not trustworthy, and that it is a frivolous complaint. For example, Sen. Packwood has been hurt more by innuendo and half truths then jus the facts.

This will work for doctors and others. The experience of the Oregon State Bar does not support the claim of increased frivolous complaints.

213 SEN. PHILLIPS: Are the immunity privileges for board members sufficient to protect them from frivolous lawsuits?

229 ZAITZ: Openness might reduce the number of frivolous complaints; people will think twice before filing such a complaint if it will become known to all.

236 SEN. PHILLIPS: Might this not cost consumers more, if doctors have to buy more malpractice insurance?

248 REP. PARKS: A dentist in Klamath Falls was victimized by their board; it works both ways.

259 SEN. PHILLIPS: One could just have lay people serve on the board, rather than have peer review.

272 REP. PARKS: Citizen review is useful and I support it very much, but if I were on the Board of Medical Examiners I would need to consult with physicians.

310 CHAIR MILLER: If allegations are made against a teacher, and the teacher leaves town, under this bill, would the names of the children be public?

325 REP. PARKS: There are protections for children in the bill as well as some other provisions that weigh against disclosure.

342 ZAITZ: Notes that the media often gives deference to victims of sexual crimes.

352 SEN. PHILLIPS: Is there a statute of limitations in filing a complaint?

380 PARKS: There isn't a statute of limitations, as such. The Judicial Fitness Council came before Ways & Means and brought a report to the members, and it was stamped "personal and confidential." There was nothing that was personal and confidential in the document, and that is the mindset of that group, as well as the Board of Medical Examiners. It is important that a regulatory board have a track record and be judged on that record.

Tape 75, Side A

005 LAURA BEEKS STUDEVOS: Testifies in favor of HB 2493.  
- Cites case of sexual abuse from Dr. Alberts. Was notified the Board of Medical Examiners with a verbal complaint, followed by a written complaint.. Was not told of any other complaints against Dr. Alberts, and additional victims were created.  
- Making public complaints would encourage others to come forward with their complaint and would minimize frivolous complaints.

045 MICHELE NORMAND: Testifies in favor of HB 2493.  
- Was sexually abused by Dr. Alberts in 1992. I contacted a lawyer the next day. I was afraid to go forward if I was the only victim, because I didn't think I'd be believed. My lawyer checked with the Board of Medical Examiners who said they could not give out that information. My lawyer researched any insurance claims against Dr. Alberts and we discovered Ms. Studevoss's complaint. Knowing this gave me the strength to go forward.  
- The Board of Medical Examiners never notified me of the final outcome concerning the case. I was not allowed to testify in person before the Board. During the entire 18-month investigation we were kept in the dark as to what was going on.  
- I took my story public to protect other women from Dr. Alberts, because the Board failed to.  
- The bill is important to allow consumers to make informed decisions.  
- Victims are not afraid to have their names public; the Board is overly concerned with how the doctor may be impacted while ignoring the victim. The process is too secretive.

115 JANE NASS: Testifies in favor of HB 2493.  
- Was sexually abused by Dr. Alberts.  
- My complaint was so serious it was forwarded to the Board of Medical Examiners, who wanted a verbal statement. The investigation last two years. I was not able to find out if any complaints had ever been filed. I was kept completely in the dark.  
- I have since heard stories of abuse concerning this doctor spanning a thirty year period.  
- It is easier to find information on homes than it is finding information regarding someone who is performing intimate exams.

180 SEN. SPRINGER: Thanks the witnesses for testimony; it was critical. Asks for a work session on HB 2493 this morning.

210 CHAIR MILLER: Will investigate whether bill needs to go to Ways and Means. Recesses committee due to Floor Session.

212 CHAIR MILLER: Reconvenes committee.

HB 2957 - Public Hearing/Work Session

Witnesses: BRIAN DOUGHERTRY, SINGER FINANCIAL SERVICES

223 BRIAN DOUGHERTRY: Testifies in support of HB 2957. This bill allows lottery winners to assign their proceeds. There are restrictions and requirements. About five other states have this provision. If there are

adverse tax consequences to other lottery winners as a result of this assignment process, it could be suspended by the court until that was clarified.

HB 2957 - Public Hearing

240 MOTION: Sen. Phillips moves HB 2957 to the Floor with a do pass recommendation.

VOTE: Hearing no objection, the motion carries. Sen. Gold is excused.

HB 2493 - Public Hearing

Witnesses: Scott Gallant, Oregon Medical Association  
Bob Oleson, Oregon State Bar  
Rick Griebel, Oregon State Bar  
Ed Patterson, Oregon Hospitals and Health Care Systems  
Bob Caldwell, Oregonian  
Gail Ryder, Oregon Newspapers Assn.  
Mike Simms, Oregon Assn. of Broadcasters  
Sian-ming Hung, M.D.

250 SCOTT GALLANT: Testifies against HB 2493 (EXHIBIT A).

366 GALLANT: continues. Reads from written testimony.

Tape 74, B

002 GALLANT: Continues reading his written testimony.

088 GALLANT: Feels the measure carries a significant fiscal impact.

090 SEN. PHILLIPS: What does the Board of Medical Examiners estimate the fiscal impact to be?

096 GALLANT: I believe the initial minimal impact was \$60,000 to the Board of Medical Examiners; other boards are affected. There would be legal costs as well.

117 BOB OLESON: Testifies in favor of HB 2493 (EXHIBIT B).

140 RICK GRIEBEL: Testifies in favor of HB 2493.  
- Our system has been open since 1976. Our disciplinary records are open from the time a complaint comes into the Bar. There was lawyer resistance when this policy first took affect, but the system has worked well. The increase in credibility for the Bar has outweighed concerns of frivolous complaints being filed. Our system is a model for other states.  
- The media has been very responsible in having access to information; reputations can be hurt.

160 CHAIR MILLER: Has peer review has been negatively impacted by public disclosure?

165 GRIEBEL: That has not been my experience. We don't feel that it has stopped people from complaining about unethical lawyers.

170 SEN. PHILLIPS: Are disciplinary policies supported by fees? Has the budget increased as a result?

180 GRIEBEL: Yes, they are paid for by dues, and it is difficult to assess the cost. We do get about 80 requests a week for information The only fee charged to requesters is for copying.

185 ED PATTERSON: Testifies against HB 2493.  
- We did not oppose the measure when it was debated by the House of Representatives. There are problems with some licensing boards.  
- Hospital governing boards are required to establish a medical staff credentialing process, and most are diligent and require peer review.  
- We are concerned with sections 5,6,7. When a hospital sets up a peer review process, some confidentiality is required and this must be maintained in order to have adequate peer review.

253 SEN. PHILLIPS: Are those amendments ready to be drafted?

254 PATTERSON: No.

263 CHAIR MILLER: Were you a participant in the discussion of the measure by the House of Representatives?

286 PATTERSON: We didn't think the bill would have a hearing on the Senate side; we can have those amendments prepared.

274 GALLANT: The Oregon Medical Association proposed a number of amendments on the measure to the House of Representatives, none of which were accepted; we are prepared to offer those again.

282 CHAIR MILLER: Recesses committee due to a call of the Senate.

282 CHAIR MILLER: Reconvenes committee.

304 SIAM-MING HUNG, MD:  
- Reads testimony from Kelly & Craig Schommer (EXHIBIT C).  
- Reads testimony regarding his experience with the Board of Medical Examiners (EXHIBIT D).

362 BOB CALDWELL: Testifies in favor of HB 2493. Presents written testimony (EXHIBIT E). The burden has always been on the people who want to keep things secret, not on those who want to keep things open. The way the bill handles confidentiality is similar to the way our system in general handles it. Every news organization in Oregon has non-disclosure policies regarding the names of rape victims, sexual abuse victims, and are followed.

- The BME was so concerned about the confidentiality of its complainants that it sent out a letter to them suggesting they testify before this committee, disclosing their identify here. There is a lack of a real world perspective.

- Regarding hospital peer review, the legislature could state that its intent is to not allow such access, although section 5 of the bill states that nothing in this act is intended to require a licensing board to disclose information created for the purposes of a professional peer review process.

TAPE 75, SIDE B

039 CALDWELL: There are 44 agencies affected by this bill and there is one agency objecting to it. If you want to hire a plumber you can find out if there are complaints against him. This is not the case when you want to hire a doctor.

- The committee needs to send this bill to the Floor.

046 SEN. SPRINGER: Asks if Ms. Gail Ryder has received a response to her letter requesting information. (EXHIBIT F).

050 GAIL RYDER: I've been told that the request has been forwarded to their attorney; there's been no other response.

- Provides a briefing paper to the committee (EXHIBIT G).
- Provides testimony of Anne Morrison (EXHIBIT H).
- Provides testimony of Arnold Ismach (EXHIBIT I).

097 PHILIPS: Do newspapers have any legal protection if they publicize a case that later turns out to be frivolous?

100 CALDER: If we report something true, then no. If we print something libelous, then the victim has the right to sue.

109 RYDER: Notes that people who disagree with a story can use the editorial page.

120 MIKE SIMS: Testifies in favor of HB 2493. Presents written testimony (EXHIBIT J).

- In terms of small town gossip, it is important that the media separate the fact from the fiction.

166 CHAIR MILLER: Closes hearing on HB 2493 and opens hearing on HB 2694.

HB 2694 - PUBLIC HEARING/ WORK SESSION

Witnesses: Dan McCulloch, North Pacific Union Of 7th-day Adventists, Oregon Federation of Independent Schools

158 DAN MCCULLOCH: Testifies in favor of HB 2694. Presents written testimony (EXHIBIT K). Concerned that the measure would not pass through prodedure, given sine die.

200 SEN. GOLD: Were your concerns were addressed in HB 2991?

205 MCCULLOCH: Yes. I'm concerned that HB 2991 might not survive.

222 GOLD: Suggests waiting to act on the bill until HB 2991 is through being dealt with.

MOTION: Sen. Springer moved HB 2694 to the Senate Floor with a do pass recommendation.

VOTE: Hearing no objections, the motion passes.

SB 184 - Work Session

273 SPRINGER: Agrees that the changes are nonsubstantive in nature.

MOTION: Sen. Springer moves SB 184 to the Senate Floor with a do pass recommendation.

VOTE: Hearing no objections, the motion passes.

283 CHAIR MILLER: Adjourns meeting at 12:00 p.m.

Submitted by

Committee Assistant

EXHIBIT SUMMARY

A - testimony, HB 2493, Gallant, 9 pgs.

B - testimony, HB 2493, Oleson, 2 pgs.

C - testimony, HB 2493, Hung, 1 pg.

D - testimony, HB 2493, Hung, 2 pgs.

E - testimony, HB 2493, Caldwell, 5 pgs.

F - testimony, HB 2493, Ryder, 2 pgs.

G - testimony, HB 2493, Ryder, 16 pgs.

H - testimony, HB 2493, Ryder, 6 pgs.

I - testimony, HB 2493, Ryder, 1 pg.

J - testimony, HB 2493, Sims, 1 pg.

K - testimony, HB 2694, McCulloch, 3 pgs.

ADDITIONAL TESTIMONY SUBMITTED FOR THE RECORD

L - Testimony, HB 2493, Humiston, 1 pg.

M - news articles, HB 2493, Organization for Fairness in Medical Practice,  
1 pg.

N - news articles, HB 2493, Organization for Fairness in Medical Practice,  
1 pg.