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RE: Senate Committee on General Government, Consumer and Small Business Protection- House Bill 3160

The Doctors Company insures approximately 40% of physicians practicing in Oregon. The Company and its predecessor companies, Northwest Physicians Mutual Insurance Company and Northwest Physicians Insurance Company have insured Oregon physicians since 1983. Over the last 5 years in Oregon, medical professional liability premiums have decreased and are currently at or below the premiums paid by physicians in 2002. Frequency, or the number of claims made against Oregon physicians, has decreased by 30%. There are many theories as to why claims frequency has dropped but a contributing factor is the focus of physicians and insurers on patient safety. Professional liability insurers, physicians and hospitals have invested heavily in patient safety efforts over the last decade.

The Doctors Company opposes House Bill 3160. This bill would include insurance in the definition of real estate, goods or services subject to the Unfair Trade Practices Act. Specifically, it would make insurers subject to claims of unfair trade practices brought by third parties who allege injury by those we insure.

The insurer's contract is with the policyholder. Our obligation is to provide a defense to the policyholder against allegations of negligence. This is particularly true in the case of a reciprocal insurer like The Doctors Company, owned by the physicians we insure. Our first and only priority in a claim has to be the interest of the insured. We are also obligated to comply with the regulations of the Department of Consumer and Business Services, the Oregon Insurance Code, and the Unfair Claims Settlement Practices Act (ORS 746.230), all of which protect the interests of both the policyholder and the public.

This bill would create additional obligations to persons alleging negligence by our policyholders, in direct conflict with our obligations to the people we insure. This manufactured conflict is one reason that nearly every jurisdiction has disavowed third-party bad faith. If Oregon enacts this bill it would be one of only a handful of states to allow a cause of action under this disfavored doctrine.

One of the last states to recognize third-party bad faith, West Virginia, abolished it several years ago because litigation by third-party claimants under that state's Unfair Trade Practices Act contributed to claims costs in excess of regional and national averages, higher claims frequency, and higher premiums. A 2005 study done by the West Virginia Insurance Commissioner at the direction of the West Virginia Legislature estimated that auto and homeowner rates were 25% higher than they would have been without a 3rd-party UTPA cause of action. The effect on medical liability premiums is likely to be more dramatic since premiums are driven solely by personal injury losses.

The NAIC's model Unfair Claims Settlement Practices Act has served as a template for virtually every state's unfair trade practices statutes. In 1990, the NAIC inserted the following language in its model Unfair Claims Settlement Practices Act: "Nothing herein shall be construed to create or imply a private cause of action for a violation of this Act." It was further set forth in a drafting note that the "Act is inherently inconsistent with a private cause of action" and that this view was "a clarification of original intent and not indicative of any change of position."

The states that have addressed this issue and do not recognize the third party cause of action have provided many reasons why they believe the right of action should not exist. The following are major reasons cited by states for not including insurance in the UTPA:

- Encourages litigation.
- Encourages unwarranted settlement demands.
- Coerces insurers to agree to inflated settlements.
- Places a heavy drain on judicial resources.
- Escalates the costs of insurance.
- Creates a serious conflict of interest for the insurer.
- It is not consistent with the NAIC model law's history.

In working with the Governor and his appointed Committee resulting from HB 1580, The Doctors Company has participated in development of SB 483, Resolution of Adverse Health Care Incidents. This legislation provides a vehicle for early disclosure and resolution of medical malpractice claims. It has been our understanding that no additional liability reform or expansion of liability would be considered this session. SB 483 is designed to reduce litigation and provides a

vehicle for alternative dispute resolution. HB 3160 creates a cause of action for third-party bad faith claims against insurers. This will add another layer of cost, litigation and complexity to an already administratively expensive system. Not only will the cost increases be reflected in increased insurance rates for workers compensation, auto and homeowners insurance, the increased cost of medical malpractice insurance will remove needed funds from health care.

I encourage you to oppose HB 3160 which increases cost unnecessarily and adds redundancy to ORS 746.230, The Unfair Claim Settlement Practice Act.

Thank you for allowing me to testify today.