

House Bill 2482

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides exception to physician-patient privilege for examination at deposition about communications with patient's physicians about issue of patient's physical, mental or emotional condition in proceeding in which party relies on condition as element of claim.

A BILL FOR AN ACT

1
2 Relating to physician-patient privilege; creating new provisions; and amending ORS 40.235.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 40.235 is amended to read:

5 40.235. (1) As used in this section, unless the context requires otherwise:

6 (a) "Confidential communication" means a communication not intended to be disclosed to third
7 persons except:

8 (A) Persons present to further the interest of the patient in the consultation, examination or
9 interview;

10 (B) Persons reasonably necessary for the transmission of the communication; or

11 (C) Persons who are participating in the diagnosis and treatment under the direction of the
12 physician, including members of the patient's family.

13 (b) "Patient" means a person who consults or is examined or interviewed by a physician.

14 (c)(A) "Physician" means a person authorized and licensed or certified to practice medicine,
15 podiatry or dentistry in any state or nation, or reasonably believed by the patient so to be, while
16 engaged in the diagnosis or treatment of a physical condition.

17 (B) "Physician" includes licensed or certified naturopathic and chiropractic physicians and
18 dentists.

19 (2) A patient has a privilege to refuse to disclose and to prevent any other person from dis-
20 closing confidential communications in a civil action, suit or proceeding, made for the purposes of
21 diagnosis or treatment of the patient's physical condition, among the patient, the patient's physician
22 or persons who are participating in the diagnosis or treatment under the direction of the physician,
23 including members of the patient's family.

24 (3) The privilege created by this section may be claimed by:

25 (a) The patient;

26 (b) A guardian or conservator of the patient;

27 (c) The personal representative of a deceased patient; or

28 (d) The person who was the physician, but only on behalf of the patient. Such person's authority
29 so to do is presumed in the absence of evidence to the contrary.

30 (4) The following is a nonexclusive list of limits on the privilege granted by this section:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) If the judge orders an examination of the physical condition of the patient, communications
 2 made in the course thereof are not privileged under this section with respect to the particular pur-
 3 pose for which the examination is ordered unless the judge orders otherwise.

4 (b) Except as provided in ORCP 44, there is no privilege under this section for communications
 5 made in the course of a physical examination performed under ORCP 44.

6 (c) There is no privilege under this section with regard to any confidential communication or
 7 record of such confidential communication that would otherwise be privileged under this section
 8 when the use of the communication or record is specifically allowed under ORS 426.070, 426.074,
 9 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or
 10 record to the extent and for the purposes set forth in the described statute sections.

11 **(d)(A) A patient is subject to examination at deposition as to communications with the**
 12 **patient's physician about the patient's mental, physical or emotional condition in any pro-**
 13 **ceeding in which the patient relies upon the condition as an element of the patient's claim**
 14 **or defense.**

15 **(B) After the patient's death, a person who participated in the diagnosis or treatment**
 16 **of the patient under the direction of the physician, including members of the patient's family,**
 17 **is subject to examination at deposition as to communications with the patient's physician**
 18 **about the patient's mental, physical or emotional condition in any proceeding in which any**
 19 **party relies upon the condition as an element of the party's claim or defense.**

20 **SECTION 2. The amendments to ORS 40.235 by section 1 of this 2019 Act apply to com-**
 21 **munications occurring on or after the effective date of this 2019 Act.**

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