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Testimony of Arthur Towers, OTLA Political Director
In Opposition to House Bill 3036-A
Before the Senate Committee on Health Care
May 10, 2021

Chair Patterson, Vice-Chair Knopp, members of the committee. Thank you for the opportunity to testify in opposition to HB 3036-A.

House Bill 3036-A puts patients at risk if they suffer a lifelong injury due to error or negligence by a Physician's Assistant. Current law provides for doctors or clinics to supervise Physician's Assistants, and to assume liability for errors made by a PA.

We are not at all attacking the capability of PA's to provide care within their scope of practice. Rather, we are concerned about the risk assumed by their patients for the impact of a serious injury.

HB 3036-A makes it much more likely that the PA will provide services extremely independently from doctors, and the business model encouraged by 3036 could likely replace employer-employee relationships with an independent contractor model. **HB 3036-A puts the patient at risk because the PA is less likely to have a robust insurance policy with which to compensate a victim with a serious injury like a birth defect.**

Consider a likely scenario:

The PA hangs their own shingle in east Portland with the goal of becoming the pre-eminent pre-natal care provider for immigrant women. The PA creates their own client base. In this scenario, under 3036-A, the PA is legally responsible for harm caused by errors. **The child who suffers a lifelong injury would only be covered by the PA's individually purchased insurance policy – not a clinic's or hospital's.**

It is common for a clinic to carry \$10,000,000 in medical malpractice insurance and a primary care provider to carry more than \$1,000,000 in insurance. A victim of a lifelong injury like a birth defect who must rely on a relatively small insurance

policy is highly likely to require publicly funded care later in life. Reliance on small policies creates an exposure for taxpayers.

Employers should remain liable for the on-the-job actions of their employees.

HB 3036-A creates an exception to this legal concept. On page 7, lines 21-26, the collaboration agreement exempts physicians from liability for the care provided by PA's. This would hold true even if the physician was the employer.

If employers remain liable and all PA's are employees of a provider, then patients would not be as exposed to as much risk.

The proponents testified that this is their desire, but the bill seems to incentivize a business model reliant on independent contractors.

Consider these scenarios:

- A. The PA lives in a small town and is part of multiple networks of providers. These networks all refer patients to the PA. In this scenario, the legislation needs to clarify if the PA is legally responsible for harm caused by errors because these companies are simply enabling a relationship between a provider and a patient, or if the referring entity has liability.
- B. A PA joins a clinic as an independent contractor, not as an employee. The group markets as one unit and shares overhead and expenses. The bill needs to clarify if the clinic shares liability or if the PA is solely liable.

The legislature is faced with a policy choice to maximize the independence of PA's. The parameters for the content of the collaboration agreement between the physician and PA are minimal. The requirements for a collaboration agreement are exclusively:

- a. Must be signed by physician or employer.
- b. Must include the PA's primary location of practice.
- c. Must provide a "general description" of the collaboration between the PA and physician.
- d. If the PA has less than 2,000 hours of clinical experience, then the CA must specify the # of hours spent on collaboration.
- e. Must include an (undefined) performance review process.

There has to be a way to provide this independence for PA's without shifting the risk to the patient. We strongly support the goal of the proponents to expand access to health care, particularly in underserved communities. We just want to make sure that the patients in these communities are not exposed to undue risk.

We urge a NO vote on HB 3036-A.