OREGON MEDICAL ASSOCIATION

MEMORANDUM

To: Rep. Bowman, Chair, House Committee on Rules
Rep. Drazan, Vice Chair, House Committee on Rules
Rep. Pham, Vice Chair, House Committee on Rules
Members of the House Committee on Rules

From: Mark Bonanno, General Counsel and Vice President of Health Policy

Date: June 24, 2025

Re: OMA Comments on SB 1173 A

The Oregon Medical Association (OMA) represents and advocates for more than 7,000 physicians, physician associates, medical and PA students across Oregon. Our mission is to support our members in their efforts to practice medicine effectively, improve the health of Oregonians, and provide the highest quality patient care.

We appreciate the opportunity to provide testimony regarding Senate Bill 1173 A and we are in support of the bill that clarifies that a hospital or clinic is not strictly liable under an expansive theory of products liability if they were not involved in the design or manufacture a product.

The reason for the bill is simple, in 2024 the Oregon Supreme Court issued an opinion in the case of *Brown v. Providence* (372 Or. 225) that unexpectedly extended a concept known as strict products liability to a hospital that provides a product or supply such as a drug to a patient when providing health care services to a patient.

That decision is contrary to how other states interpret products liability statutes when products and supplies are provided as part of a health care service not as part of a single retail sale. Because Oregon is now an outlier across the country for this new form of strict products liability, we are concerned about another burden imposed on our strained and fracturing health care system. We believe the Legislature can and should act now to alleviate the burden.

Thousands of products and supplies are used daily in hospitals and clinics and those locations are not involved in the design or manufacture of the product or supply. Yet, now in Oregon, those hospitals and clinics essentially step into the shoes of manufacturers for liability purposes because they are deemed sellers of those products and supplies. There will be no need to determine whether care was provided negligently or not, if a product or supply provided in that care ends up being determined to be defective, that is the end of the inquiry. The hospital or clinic will be liable and there would be no need to sue a manufacturer.

Without restoring an exception for hospitals and clinics similar to an exception physicians have had since 2009, the new threat of strict liability could lead to fewer independent and physician-owned practices for fear of taking on too much liability. Further, we could experience the stifling of medical innovation for fear of using newer treatments or engaging in a common and acceptable practice of prescribing drugs "off-label" if early studies are showing promise the drug could treat other diseases than what it was designed for.

Finally, it is important to remember, SB 1173 A does not take away an injured patient's right to sue a hospital or medical clinic for medical negligence or sue a manufacturer or distributor for harm caused by a defective product. The bill simply clarifies that a hospital or clinic is not strictly liable under an expansive theory of products liability if they were not involved in the design or manufacture a product.

We respectfully encourage the Committee to move SB 1173 A forward.

The Oregon Medical Association (OMA) is the state's largest professional organization engaging in advocacy, policy, and community-building for Oregon's physicians, physician associates, medical students, and physician associate students. The OMA's members speak with one voice as they advocate for policies that improve access to quality patient care, reduce administrative burdens on medical professionals, and improve the health of all Oregonians. Additional information can be found at www.theOMA.org.