OREGON TRIAL LAWYERS ASSOCIATION

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Opposition to Proposed Merger of OHSU and Legacy.

The Oregon Trial Lawyers Association opposes the proposed merger of Legacy Health Systems and Oregon Health Sciences University. Our members are lawyers who fight for patient rights and patient safety. We also help consumers who are victims of price gouging or predatory debt collection.

We are concerned about the merger's impact on patient safety.

Under Oregon law, patients at Legacy who are victims of medical malpractice generally have two years from the date the injury occurred or from the date that the injury should reasonably have been discovered to bring suit against the facility.

Similarly situated victims of malpractice at OHSU must take the initial step of filing an Oregon Tort Claims Notice within 180 days of the injury (or one year of the death). Failure to meet this shortened timeline bars the patient from holding the wrongdoer accountable in a civil trial. the compressed timeline under the Oregon Tort Claims Act may disproportionately harm individuals who are already marginalized by the healthcare system and have to overcome additional barriers to navigate the legal process (eg lack of trust in institutions, language barriers, less access to capital or legal counsel).

This compressed timeline limits patients' rights because it may take time for the patient to understand that malpractice was involved in the adverse outcome. In medical malpractice cases, it often takes a great deal of time to get all the records and to have those records reviewed to even begin to determine if malpractice took place.

Liability shields significantly reduce the financial incentive hospital corporations have to keep patients safe. Further, the lack of litigation keeps the medical errors out of the public eye. Public scrutiny also drives corporations to go the extra mile on safety.

Case studies of the types of patients whose rights may be limited under the merger.

- For three years leading up to her 2018 cervical cancer diagnosis, a woman was told by a Legacy doctor that her abnormal PAP smear was nothing to worry about. Her primary care provider detected the cancer. She got the treatment, but she had a recurrence of the cancer just weeks before the statute of limitation ran on her botched diagnosis. If

Legacy had been part of OHSU at the time, she would have been unable to hold the hospital accountable for their doctor's negligence.

- A Legacy doctor oversewed a woman's circumflex artery during heart surgery. She coded several times in the operating room and in recovery. The doctor told her she was fine and didn't tell her what had happened. She went back to the Legacy ER when she had trouble breathing and they accused her of drug seeking. She then got a second opinion: the doctor had permanently destroyed half her heart. The first surgery was in early February 2012. She got the second opinion in May. She had a second surgery in late July. The 180-day time limit lapsed just days after her second surgery. She sought legal help in September, roughly 210 days after the injury. If Legacy had been part of OHSU, she would have been denied the right to hold the hospital accountable.

Further, we are concerned that malpractice victims at OHSU are unable to be fully compensated for the harm caused by the negligence of the corporation. The current compensation cap is $2,565,400. Caps take the power away from juries to decide on a case-by-case the merits of the case. Victims in egregious cases in which the victim will need expensive lifelong care or experience a substantial loss of earnings are not able to be fully compensated if the malpractice occurs at OHSU. Patients injured at Legacy do not face those same restrictions. There is a compensation cap for patients killed by malpractice at private-sector hospitals, but that cap is in the review process at the Oregon Supreme Court.

Meet 7-year-old Jack Malsom

Jack and his family live in West Linn. His mother, Angela, had a normal pregnancy and received her prenatal care at Legacy. She was advised to induce labor using Pitocin, a hormone that causes uterine contractions. During the course of her labor, the fetal heart rate monitor showed Jack was not tolerating labor. His heart rate dropped to emergency levels, depriving his brain of oxygen. The nurse repeatedly suggested turning down the Pitocin so the baby could catch his breath between contractions, but the doctor refused. Legacy continued the Pitocin, making the problem worse. The lack of oxygen to Jack's brain caused brain damage, leading to cerebral palsy. Because of Legacy's negligence, Jack will be permanently impaired in all aspects of life. He will never walk and cannot speak. Jack needs care around the clock. His parents will be his care givers during their lifetimes, but Jack is expected to outlive them by decades. The current OHSU cap would have bankrupted this family and taken away their power to hold Legacy accountable.

The Health Care Marketplace Oversight review should result in the protection of Legacy's patients' rights, not a diminishment of their rights.

Horizontal health care mergers hurt consumers.

We are also concerned about consumer protection. Studies from the Kaiser Family Foundation, the RAND Corporation, and the federal Medicare Payment Advisory Commission among others indicate that horizontal mergers like the one considered here raise prices for consumers. Many Oregonians are still struggling from the lingering impact of the 2021-23 inflationary period. Artificially increased medical bills should be avoided at all costs.
Environmental Scan on Consolidation Trends and Impacts in Health Care Markets | RAND

Key passage: *The authors found strong evidence that hospital horizontal consolidation is associated with higher prices paid to providers and some evidence of the same for vertical consolidation of hospitals and physician practices. Health care spending is likely to increase in tandem with these price increases.*

Ten Things to Know About Consolidation in Health Care Provider Markets | KFF
Key Passage: *A substantial body of research shows that consolidation has led to higher health care prices, as noted in a 2020 KFF issue brief on provider consolidation. The evidence that consolidation leads to higher prices is strongest for hospitals, though studies that have evaluated physician and hospital-physician consolidation have also tended to find that they are associated with higher prices. Studies that have looked specifically at consolidation among nonprofit hospitals—which account for 58% of all community hospitals—have found price increases as well.*

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Key Passage: The literature indicates that hospitals with large market shares have the leverage to negotiate relatively high prices from commercial insurers.

Is out-of-state expansion appropriate for an Oregon corporation?

Further, we are concerned about an Oregon public corporation operating a hospital or other health facilities in the state of Washington. We fail to see how this element of the transaction advances the goals of OHSU, as laid out in 353.030.

For more information, please contact:
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