

Senate Bill 332

Sponsored by 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**.

Extends physician-patient privilege to confidential communications between patients and dentists.

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) "Physician" means a person authorized and licensed or certified to practice medicine **or**
15 **dentistry** in any state or nation, or reasonably believed by the patient so to be, while engaged in
16 the diagnosis or treatment of a physical condition. "Physician" includes licensed or certified
17 naturopathic and chiropractic physicians **and dentists**.

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

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

24 (a) The patient;

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

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

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

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

30 (a) If the judge orders an examination of the physical condition of the patient, communications
31 made in the course thereof are not privileged under this section with respect to the particular pur-

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 pose for which the examination is ordered unless the judge orders otherwise.

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

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

9 **SECTION 2. The amendments to ORS 40.235 by section 1 of this 2005 Act apply only to**
10 **confidential communications made on or after the effective date of this 2005 Act.**

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