

# Chapter 752

## 1975 REPLACEMENT PART

### Malpractice Insurance

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### CROSS REFERENCES

Physicians, general, Ch 677  
Statute of limitations for medical malpractice, 12 110



**752.010 Policy.** The Legislative Assembly finds that it is in the interest of the people of Oregon that physicians in this state be insured for professional liability and that the insurance be available at reasonable rates. It is declared to be the policy and intent of the Legislative Assembly that an Oregon physician who participates in the plan set forth in ORS 12.110, 41.675, 677.095, 677.188, 677.190, 677.205, 677.410 to 677.425, 731.504, 743.780 and this chapter, maintains the designated limits of professional liability protection and contributes to a fund for the protection of his patients shall be deemed to have fulfilled the objectives of this public policy.

[1975 c 796 s 13]

**752.020 Definitions.** As used in ORS 752.010 to 752.140:

(1) "Physician class 1" includes physicians engaged in the treatment of allergic diseases, administrative or public health medicine, cardiology, dermatology without radiation therapy, endocrinology, gastroenterology, general or family medicine without surgery, geriatrics, hematology, internal medicine, neurology, pathology, pediatrics, psychiatry, rheumatology, and roentgenology or radiology without radiation therapy.

(2) "Physician class 2" includes physicians engaged in dermatology with radiation therapy and roentgenology or radiology with radiation therapy.

(3) "Physician class 3" includes physicians engaged in general practice with less than 25 percent of the practice being surgery, special practice with less than 25 percent of the practice being surgery and any other physician not included in physician class 4, 5 or 6 who performs surgery.

(4) "Physician class 4" includes physicians engaged in general practice with more than 25 percent of the practice being surgery, special practice with more than 25 percent of the practice being surgery, ophthalmology and proctology.

(5) "Physician class 5" includes physicians engaged in cardiac surgery, otolaryngology, general surgery, head or neck surgery, oncology, pediatric surgery, thoracic surgery, urology, vascular surgery and emergency room service.

(6) "Physician class 6" includes physicians engaged in anesthesiology, gynecology and obstetrics, hand surgery, neurosurgery, orthopedic surgery and plastic surgery.

[1975 c 796 s.13a]

**752.030 Classification of physician in case of doubt or dispute.** If doubt or dispute exists as to which class a physician belongs for the purposes of ORS 752.010 to 752.140, the Insurance Commissioner, after conferring with the Board of Medical Examiners for the State of Oregon, shall determine the class and shall so notify the physician.

[1975 c 796 s 13b]

**752.040 Limitation of physician's liability for professional negligence; requirements for and conditions of limitation of liability; payment of amounts in excess of limitation of liability.** (1) When a physician licensed under ORS chapter 677 is insured by an insurer licensed and approved by the Insurance Commissioner or under a self-insurance plan approved by the Insurance Commissioner against legal liability for damages arising out of professional negligence for the injury or death of a human being in the sum required under subsection (2) of this section, and if the physician has paid the current annual fee required under ORS 752.080, the physician shall not be liable to any person beyond the limits of such professional liability insurance.

(2) The amount of professional liability insurance required to obtain the limitation of liability granted by subsection (1) of this section is:

(a) For a physician in physician class 1 or 2, \$100,000 for each occurrence and \$100,000 aggregate for occurrences of any one year or \$100,000 for each claim made and \$100,000 aggregate for claims made in any one year;

(b) For a physician in physician class 3 or 4, \$300,000 for each occurrence and \$300,000 aggregate for occurrences of any one year or \$300,000 for each claim made and \$300,000 aggregate for claims made in any one year; or

(c) For a physician in physician class 5 or 6, \$500,000 for each occurrence and \$500,000 aggregate for occurrences of any one year or \$500,000 for each claim made and \$500,000 aggregate for claims made in any one year.

(3) Any physician who carries a claims made policy or is protected by approved self-insurance and who discontinues practice may obtain a limitation of liability for himself and his insurer by maintaining the claims made policy by paying the premiums required by the insurer or approved self-insurer for coverage after retirement and by paying the annual fee then required for the

same period as the insurer or approved self-insurer requires a premium to be paid.

(4) When an individual obtains a final judgment or award in a civil action or arbitration proceeding brought against a physician for professional negligence or agrees to an approved settlement of his claim for damages against a physician for professional negligence, if that individual does not receive the full amount of his judgment, award or approved settlement from an insurer or approved self-insurer or the physician because of the limitation of liability granted by subsection (1) of this section, that individual shall receive compensation in the remaining unpaid amount of his judgment, award or approved settlement from the Medical Excess Liability Fund as provided in ORS 752.010 to 752.140.

(5) When a complying physician's professional liability insurance coverage required under this section for occurrences for any one year is exhausted or insufficient to fully pay the claimant the full amount of his final judgment, award or approved settlement, due to prior final judgments, awards or approved settlements, the claimant shall be entitled to recover the difference between the remaining coverage and the full amount of his final judgment, award or approved settlement from the Medical Excess Liability Fund.

(6) Upon a showing to the court of the insufficiency of the physician's remaining professional liability coverage, the court shall issue an order to the Insurance Commissioner directing him to pay the difference between the remaining coverage and the final judgments, awards or approved settlements subject to the limitations of this section.

(7) After payment by the insurer or approved self-insurer on behalf of its insured physician of his remaining coverage and after issuance of a court order requiring the Insurance Commissioner to pay the difference from the Medical Excess Liability Fund, the claimant shall execute and deliver to the physician a full and complete satisfaction of his judgment or a complete release of all claims against the physician and his insurer for the occurrence which was the basis of the claim.

[1975 c 796 s 14]

**752.050 Payment by insurer to limits of liability bars claim for indemnity or contribution.** (1) When an insurer or approved self-insurer pays a claimant on behalf of its insured physician an amount equal to the limit of his liability under subsections

(1) and (2) of ORS 752.040 to satisfy a final judgment or award given against the physician in a civil action or arbitration proceeding for professional negligence or to comply with an approved settlement agreed to by the physician and claimant, no other person shall have a claim for indemnity or contribution against the physician or his insurer as a result of the same occurrence out of which the judgment, award or approved settlement arose.

(2) No person other than a claimant, or in the event of the death of the claimant, his personal representative, shall have any claim for compensation, indemnity or contribution from the Medical Excess Liability Fund.

[1975 c 796 s 15]

**752.060 Payment of claimants after judgment, award or settlement; commissioner to review settlements; claimant to execute satisfaction of judgment or release.** (1) When an individual obtains a final judgment or award against a physician in a civil action or arbitration proceeding for professional negligence in excess of the limitation of subsections (1) and (2) of ORS 752.040, the court shall determine whether the liability of the physician and his insurer or approved self-insurer is limited under subsections (1) and (2) of ORS 752.040 by compliance with those subsections. If the court determines that the liability of the physician and his insurer or approved self-insurer is so limited, the court shall issue an order to the Insurance Commissioner directing him to pay the amount by which the judgment or award exceeds the physician's and his insurer's or approved self-insurer's liability from the Medical Excess Liability Fund to the individual in whose favor the judgment or award was given.

(2) When an individual agrees to a settlement of his claim against a physician for alleged professional negligence in an amount greater than the limited liability of the physician and his insurer or approved self-insurer under subsections (1) and (2) of ORS 752.040, that individual shall petition any circuit court in this state for an order approving the settlement and requiring payment of any amount greater than the physician's or his insurer's or approved self-insurer's limited liability from the Medical Excess Liability Fund. When an individual files his petition under this subsection, he must at the same time send a copy of the petition by registered or certified mail to the Insurance Commissioner. When the Insurance Commissioner receives a copy

of a petition under this subsection, he shall review the facts of the case and evaluate the proposed settlement. He or his representative may meet with the parties to the settlement or their representatives. If, after review and evaluation, the Insurance Commissioner approves the proposed settlement, he shall file a statement of approval with the circuit court in which the petition was filed. When the statement of approval is filed, further court proceedings in the matter of the proposed settlement shall cease and the settlement shall be approved. If, after review and evaluation, the Insurance Commissioner does not approve the proposed settlement, he shall so notify the circuit court in which the petition was filed, and the court shall make the Insurance Commissioner a party to the settlement proceedings until the proposed settlement is approved or disapproved by the court. After a hearing at which the Insurance Commissioner or his representative shall be present, if the court approves the settlement, it shall issue an order directing the Insurance Commissioner to pay the amount in excess of the limited liability of the physician and his insurer or approved self-insurer from the Medical Excess Liability Fund.

(3) After payment in full of the amount of the final judgment or award or the approved settlement or after payment of a sum equal to the limited liability of a physician and his insurer or approved self-insurer to a claimant who has obtained a final judgment or award against the physician for professional negligence or who has agreed to an approved settlement of his claim against the physician for alleged professional negligence, and upon the issuance of the court's order under subsections (1) and (2) of this section for payment from the Medical Excess Liability Fund, the claimant shall execute and deliver to the physician a complete satisfaction of judgment or a complete release of all claims against the physician and his insurer or approved self-insurer for professional negligence for the occurrence which was the basis of the claim.

[1975 c.796 s 16]

**752.070 Payment of claims from fund; alternative methods of payment.** (1) When the Insurance Commissioner receives a court order requiring payment of moneys from the Medical Excess Liability Fund, he shall pay the amounts stated in the court's order.

(2) The Insurance Commissioner shall pay moneys from the Medical Excess Liability Fund collected for occurrences of the year of occurrence which is the basis of claimant's judgment, award or approved settlement as follows:

(a) No more than 10 percent in any one year of that portion of the final judgment, award or approved settlement which is payable by the fund. Such payment may in the discretion of the commissioner be made by instalments or annuities.

(b) At the conclusion of the period when all final judgments, awards and approved settlements for occurrences of any one year are ascertained the commissioner shall:

(A) If the fund is sufficient, pay all entitled claimants their full remaining unpaid claim with interest at the rate of six percent per annum; or

(B) If the fund is insufficient to pay to all entitled claimants fully, then pay them their pro rata share of the remaining fund.

(3) Such payment by the fund shall satisfy in full all claims against the fund. If there is a surplus after payment to all entitled claimants, the Insurance Commissioner may apply the surplus to any fund collected for occurrences for any one or more years.

[1975 c 796 s 17]

**752.080 Physician's annual payment to fund; receipt by commissioner; evidence of limitation of physician's personal liability.** (1) An Oregon physician who wishes to limit his liability for damages for the injury or death of a human being as provided in subsections (1) and (2) of ORS 752.040 shall, not later than the date specified by the Insurance Commissioner in each year, pay the Insurance Commissioner the sum of:

(a) \$150, if the physician is in physician class 1 or 2;

(b) \$450, if the physician is in physician class 3 or 4; or

(c) \$750, if the physician is in physician class 5 or 6.

(2) Moneys received by the Insurance Commissioner under subsection (1) of this section shall be delivered by him to the State Treasurer for deposit in the Medical Excess Liability Fund.

(3) Upon receipt of a payment by an Oregon physician under subsection (1) of this section, the Insurance Commissioner shall send the physician a certificate of receipt that evidences the payment and the limita-

tion of the personal liability of the physician.

(4) A physician who pays the fee required under subsection (1) of this section shall not be required to make further payments in the same year.

[1975 c 796 s 18]

**752.090 Medical Excess Liability Fund; purpose; investment.** There is created a Medical Excess Liability Fund to be held by the State Treasurer and to be deposited by him in such banks as are authorized to receive deposits of the General Fund. All payment of compensation to individuals under ORS 752.010 to 752.140 shall be made from the Medical Excess Liability Fund. The moneys deposited in the Medical Excess Liability Fund are continuously appropriated for the purpose of paying compensation to individuals under ORS 752.010 to 752.140 and paying the administrative expenses of the Insurance Division of the Department of Commerce in administering ORS 752.010 to 752.140. All moneys in the Medical Excess Liability Fund may be invested as provided in ORS 293.701 to 293.776, and the earnings from such investment shall be credited to the Medical Excess Liability Fund.

[1975 c 796 s 21]

**752.100 Liability for payments contingent on reserves in fund.** Liability of the Medical Excess Liability Fund for the payment of compensation under ORS 752.010 to 752.140 is contingent upon and limited by the availability of reserves in the Medical Excess Liability Fund.

[1975 c.796 s.22]

**752.110 Fund not liable for punitive damages.** The Medical Excess Liability Fund shall not be liable for awards for punitive damages nor shall the insurer or approved self-insurer of a complying physician be liable for punitive damages unless the policy provides for such coverage. Nothing in ORS 752.010 to 752.140 shall be construed to grant a physician personal immunity from that portion of any judgment that is assessed as punitive damages.

[1975 c 796 s 23]

**752.120 Notifying commissioner of claims against fund.** A physician or his

insurer or approved self-insurer shall notify the Insurance Commissioner of all actions filed which may subject the Medical Excess Liability Fund to claims. Such notice shall include the date of the alleged occurrence, the filing date of the complaint and the amount prayed for in the complaint.

[1975 c 796 s.24]

**752.130 Commissioner to report to Legislative Assembly.** The Insurance Commissioner shall transmit to the Legislative Assembly, as soon after January 15 of every odd-numbered year as is consistent with full and accurate preparation, a report of his transactions under ORS 752.010 to 752.140, including a detailed statement of moneys deposited in and expended from the Medical Excess Liability Fund, and such other information as the Legislative Assembly may require.

[1975 c 796 s 19]

**752.140 Rules.** In accordance with the applicable provisions of ORS 183.310 to 183.500, the Insurance Commissioner may make reasonable rules necessary for or as an aid to the effectuation of ORS 752.010 to 752.140.

[1975 c 796 s 20]

**752.150 Attorney fees in action for damages resulting from professional negligence.** When, in an action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation, the plaintiff's attorney is employed under an agreement whereby the attorney receives as his fee a percentage of the damages awarded to the plaintiff, notwithstanding the terms of that agreement the plaintiff's attorney shall not receive more than 33-1/3 percent of the moneys awarded to the plaintiff.

[1975 c.796 s.25]

**752.160 Applicability.** The provisions of ORS 752.010 to 752.140 apply to and govern alleged incidents of professional negligence that occur on or after July 1, 1975.

[1975 c.796 s.27]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law.  
Done at Salem, Oregon,  
October 1, 1975

Thomas G Clifford  
Legislative Counsel

**CHAPTERS 753 to 755**  
**[Reserved for expansion]**

